

OFFICE OF THE  
UNITED STATES TRADE REPRESENTATIVE

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TRADE POLICY STAFF COMMITTEE

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FTAA MARKET ACCESS  
PUBLIC HEARING

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TUESDAY  
SEPTEMBER 10, 2002

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The Public Hearing convened in Conference Rooms 1 & 2 in the USTR Annex at 1724 F Street, N.W., Washington, D.C., at 10:00 a.m., Carmen Suro-Bredie, Chair, presiding.

PRESENT:

Office of the U.S. Trade Representative  
CARMEN SURO-BREDIE, Chair  
KIRA ALVAREZ  
BARBARA CHATTIN  
KIMBERLY CLAMAN  
WILLIAM CLATANOFF  
BENNETT HARMAN  
JONATHAN McHALE  
JOE PAPOVICH  
RUSSELL SMITH  
GLORIA BLUE, Executive Secretary

U.S. Department of Agriculture  
OMAR KARAWA

U.S. Department of Commerce  
JULIET BENDER

PRESENT (con't):

U.S. Department of Labor  
ANA VALDES

U.S. Department of State  
BARBARA BOWIE-WHITMAN

U.S. Department of Treasury  
JOHN WORTH

U.S. International Trade Commission  
DAN LEAHY

## C-O-N-T-E-N-T-S

<u>AGENDA</u>	<u>PAGE</u>
Jack Roney & Donald Phillips American Sugar Alliance	5
Andrew Lavign Florida Citrus Mutual	18
Robert Vastine Coalition of Service Industries	35
Calman J. Cohen Emer. Committee of American Trade	49
Tim Richards GE on behalf of National Association of Manufacturers	61
John Murphy Western Hemisphere Affairs U.S. Chamber of Commerce	76
Lee Sandler American Free Trade Association	86
Walter B. McCormick, Jr. United States Telecom Association	97
Jo Marie Griesgraber Oxfam America	107
Karen Hansen-Kuhn Alliance for Responsible Trade/U.S. Gender and Trade Network	122

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P-R-O-C-E-E-D-I-N-G-S

10:02 a.m.

CHAIRPERSON SURO-BREDIE: On the record.

This hearing is called to order. This is the second day of hearings on the FTAA. Yesterday's testimony is there as well as the opening statement. In the opening statement, you will find the date for rebuttal briefs. Please if at all possible send any information to USTR electronically. We're unable to accept packages from messengers and also our mail delivery is sporadic. Thank you. Our first witnesses will be Jack Roney and Donald Phillips. Welcome back, Don. The panel will introduce themselves. We'll start over here.

MR. KARAWA: My name is Omar Karawa from the Department of the Agriculture.

MR. LEAHY: Dan Leahy, International Trade Commission.

MS. CHATTIN: Barbara Chattin, USTR.

CHAIRPERSON SURO-BREDIE: Carmen Suro-Bredie, USTR.

MS. BENDER: Juliet Bender, Department of

1 Commerce.

2 MS. VALDES: Ana Valdes, Labor Department.

3 MR. WORTH: John Worth, Treasury  
4 Department.

5 CHAIRPERSON SURO-BREDIE: Thank you. The  
6 floor is yours, sir.

7 MR. RONEY: Thank you, Madam Chairperson.  
8 I'm Jack Roney. I'm proud to testify on behalf of the  
9 American Sugar Alliance, the national coalition of  
10 growers, processors and refiners of sugar beets, sugar  
11 cane and corn for sweetener. I'm accompanied by ASA  
12 Trade Advisor, Don Phillips.

13 The world market for sugar is  
14 characterized by a vast and complex array of policies  
15 that facilitate and encourage dumping on to the world  
16 market. World dump market prices have averaged barely  
17 half the world average cost of producing sugar for  
18 more than two decades. The only way to address the  
19 complex array of government policies that distort the  
20 world sugar market is multi-laterally and  
21 comprehensively through the World Trade Organization,  
22 all countries all policies.

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1           American sugar farmers have long endorsed  
2           that goal of global free trade. Our producers are  
3           efficient by world standards and welcome the  
4           opportunity to compete on a level playing field. We  
5           have endorsed the goals of the U.S. Government's  
6           negotiating strategy for the DOHA Round of the WTO  
7           negotiations. We cannot however endorse the strategy  
8           of addressing sugar distortions in the narrow and  
9           limited parameters of a regional trade agreement such  
10          as the FTAA. The most damaging government policies  
11          are beyond the reach of FTAA negotiations either  
12          because like Brazilian sugar cane ethanol subsidies or  
13          Mexican government ownership of sugar mills they will  
14          not be covered by the FTAA negotiations or like the  
15          export subsidy regime of the European Union they are  
16          outside the FTAA area.

17                 Global sugar policy distortions must be  
18                 addressed globally. Disciplines on sugar must be  
19                 reserved for WTO negotiations. Until the pervasive  
20                 dumping is addressed in the comprehensive way and  
21                 these distorted policies are eliminated, significant  
22                 U.S. concessions on sugar market access and the FTAA

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1 would have ruinous effects on the U.S. sugar industry  
2 and indeed on most FTAA countries.

3 In the U.S., exposure to subsidized world  
4 dump market sugar would result in the flooding of an  
5 already oversupplied domestic market by imports, a  
6 disastrous fallen income for sugar producers and  
7 massive forfeitures to the government with attendant  
8 huge cost to U.S. taxpayers. In other FTAA countries,  
9 most of which benefit from guaranteed virtually duty-  
10 free access to the U.S. market at the preferential  
11 U.S. price, the revenue reduction from those exports  
12 would be an enormous economic hardship. The smaller  
13 FTAA countries that rely heavily on the U.S. market  
14 would be particularly vulnerable.

15 A further danger of regional trade  
16 concessions is the loss of U.S. leverage in WTO  
17 negotiations making it unlikely that the problems  
18 plaguing the world sugar market could be dealt with  
19 effectively in those negotiations. Seventeen of the  
20 world's top 21 sugar exporters are not part of the  
21 FTAA. The threat of additional FTAA concessions on  
22 sugar make it impossible for the U.S. sugar industry

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1 to maintain support for the ambitious program of  
2 reform the U.S. Government is pursuing in the WTO  
3 agricultural negotiations.

4 Given that our domestic market is mature,  
5 consumption is stagnant, domestic marketing are  
6 restricted under the new Farm bill and the level of  
7 imports from Mexico is unresolved, it would be  
8 unconscionable for U.S. FTAA negotiators to propose  
9 greater access to our market. Such a proposal would  
10 cause the U.S. sugar industry to bring its strongest  
11 level of opposition against the FTAA.

12 I would like to focus briefly on two major  
13 FTAA sugar producing countries, Brazil and Mexico.  
14 Under regional free trade circumstances, all FTAA  
15 countries would be in danger of being swamped with  
16 subsidized sugar from Brazil. Brazil has quintupled  
17 its sugar cane production since the inception in 1975  
18 of its PROALCOOL program subsidizing production of  
19 fuel ethanol from cane to reduce Brazil's dependence  
20 on oil.

21 Most Brazilian cane is converted to  
22 ethanol through a system of mill distilleries

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1 constructed with government help. Tax breaks make the  
2 ethanol competitive with gasoline. In the 1990s as  
3 Brazil reduced its ethanol subsidies and more cane  
4 shifted to sugar, Brazil's sugar production doubled  
5 and its exports tripled aided by massive currency  
6 devaluations, debt forgiveness, infrastructural  
7 subsidies, directing some subsidies to some growers,  
8 low environmental standards and government tolerance  
9 of widespread use of child labor.

10 Aided by this myriad of subsidies, Brazil  
11 is now the world's leading sugar exporter and accounts  
12 for nearly half of FTAA sugar production and three-  
13 fourths of FTAA sugar exports. With the possible  
14 exception of the direct income supports, the FTAA will  
15 address none of these subsidies. The NAFTA provides  
16 an example of the danger of entering into a regional  
17 trade agreement absent disciplines on subsidies.  
18 Mexico is demanding unlimited access to the U.S.  
19 market for sugar surpluses that amass from years of  
20 government subsidies, debt forgiveness in particular  
21 and now from direct government ownership of half of  
22 the Mexican industry. In neither case should

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1 efficient, unsubsidized American sugar farmers be  
2 displaced by subsidized foreign producers.

3 There is ample precedent for reserving  
4 sugar for WTO disciplines. WTO rules require only  
5 that free trade agreements cover substantially all  
6 trade between participants. This has been widely  
7 interpreted to allow effective omission of certain  
8 products. Sugar had been substantially excluded from  
9 virtually all of the more 130 regional and bi-lateral  
10 agreements in existence today.

11 The U.S. sugar industry proposes a sounder  
12 course of action. FTAA countries should join together  
13 in the WTO negotiations and aggressively attack and  
14 eliminate on a global basis the government policies  
15 that are so grossly distorting world trading sugar.  
16 Success in achieving this objective would benefit all  
17 FTAA sugar producers and create a viable basis for  
18 further improvements in market access within the  
19 framework of WTO negotiations. Given the complex  
20 barriers affecting the world sugar market, sugar  
21 sector specific negotiations within the framework of  
22 WTO agricultural negotiations are the only feasible

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1 way of achieving free trade.

2 In conclusion, I reiterate. American  
3 sugar farmers support multi-lateral negotiation of  
4 genuine global free trade in sugar. But if the U.S.  
5 Government proposes to increase access to our sugar  
6 market in the FTAA negotiations, we'll have no choice  
7 but to bring the strongest level of opposition to the  
8 FTAA. Thank you for your attention.

9 (Discussion off microphone.)

10 CHAIRPERSON SURO-BREDIE: Thank you, Mr.  
11 Roney. The panel has been joined by Barbara Bowie-  
12 Whitman of the State Department who will lead off with  
13 the first question.

14 MS. BOWIE-WHITMAN: Thank you. Reflecting  
15 a little bit about what you have said about world  
16 production and world prices, your testimony seems to  
17 indicate that all of the countries exporting sugar at  
18 the world price might be dumping. That creates some  
19 questions in my mind at least. I wonder if the  
20 average world cost of production is 16 cents, that's  
21 an average. Isn't it true that there could be some  
22 countries producing sugar at a lower price than the

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1 average and perhaps even closer to world price?

2 MR. RONEY: Yes, that's certainly an  
3 average. Many countries produce at a higher price  
4 than the average. Many at a lower price. However to  
5 my knowledge, none are achieving cost of production as  
6 low as six cents per pound. The lowest cost producers  
7 in the world are perhaps achieving limited amounts of  
8 production as low as ten cents per pound but even they  
9 are not achieving cost of production as low as the  
10 world dump market price.

11 MS. BOWIE-WHITMAN: There's no such thing  
12 as a world price. There's only a world dump price.

13 MR. RONEY: Yes, that is certainly a world  
14 dump price. I couldn't agree with you more.

15 CHAIRPERSON SURO-BREDIE: Our next  
16 question will be from the Department of Agriculture.

17 MR. KARAWA: I have two questions. The  
18 first one is could you please elaborate from how you  
19 view the effects of Brazil as a problem in its sugar  
20 production and pricing.

21 MR. RONEY: Brazil -- Could you please  
22 repeat the question in terms of its own pricing or

1 world market pricing?

2 MR. KARAWA: Its own pricing.

3 MR. RONEY: In Brazil which is the world's  
4 second largest cane producer, second only to India,  
5 sugar is an afterthought of cane production. It's  
6 essentially a by-product. The Brazilian sugar cane  
7 industry was built on ethanol program, ethanol  
8 subsidies to reduce Brazil's dependence on foreign  
9 oil. At times as much as two-thirds of Brazilian cane  
10 has gone into ethanol.

11 What has happened in the 1990s is that as  
12 oil prices have come down as Brazil has discovered  
13 some off-shore oil resources of their own, they have  
14 begun to reduce subsidies for ethanol both at the  
15 producer level and at the consumer level. As a  
16 result, more cane has been shifting to sugar to the  
17 extent that in some years nearly half of the cane but  
18 not more than half has been going to sugar.

19 What is extremely obvious is that the  
20 amount of sugar that Brazil produces is not related to  
21 the world market price for sugar but to the level of  
22 ethanol subsidy. Many of these mill distilleries are

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1 just that. They can do either virtually with a flip  
2 of a switch. They can decide whether the cane will be  
3 devoted to ethanol or to sugar.

4 The evidence that we have that further  
5 reinforces the notion that Brazil's sugar production  
6 decisions are more linked to ethanol subsidies than to  
7 world market prices is that in the mid-90s world sugar  
8 prices were at an unusual high of about 13 or 14 cents  
9 per pound. At that time, Brazil began reducing its  
10 ethanol subsidies and shifting more cane into sugar.  
11 In a span of just about a four year period, that was  
12 when Brazil doubled the sugar production and tripled  
13 the sugar exports. As it was exporting more and more  
14 sugar onto the world market, the world market price  
15 tumbled from 14 cents to four cents in just a couple  
16 of years.

17 Yet Brazil continued to produce sugar,  
18 continued to export on to the world market. What  
19 largely enabled them to do that was drastic currency  
20 devaluations. At one stroke in 1999, Brazil devalued  
21 the rial by 40 percent. So that was in effect erasing  
22 for them the drop in the market price because they

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1 were able to devalue the rial to such an extent that  
2 it offset that.

3 The point I want to make is that in Brazil  
4 is that the decisions on sugar production exports are  
5 not market oriented. They are not linked to what's  
6 going on in the Brazilian or the world sugar market  
7 but rather to what's happening with ethanol subsidies,  
8 oil prices and aided to a large extent by currency  
9 devaluations and the other list of subsidies that I  
10 mentioned in Brazil.

11 MS. CHATTIN: Could I just follow up with  
12 that? If I understood you correctly what you said is  
13 that the cross subsidization that you said from  
14 ethanol to the sugar producers decreased and yet sugar  
15 production went up. When the perceived price to the  
16 domestic producers did not follow along with world  
17 prices because of the currency devaluation, sugar  
18 didn't respond. To me that sounds like at least on  
19 the domestic level they are responding to the market  
20 signals to some extent and that they are not ignoring  
21 the incentive structure that they perceive.

22 MR. RONEY: The market is, and I would

1 focus on the ethanol market, the primary market for  
2 sugar cane, profoundly affected by Brazilian  
3 government decisions on what to set ethanol prices at  
4 to what extent to offer tax incentives for consumer  
5 consumption of ethanol and so on. So the effect  
6 remains on sugar production is isolated. What the  
7 sugar producers are doing to a large extent is given  
8 that they are producing large amounts of sugar cane  
9 and have been encouraged to for the last 25 years that  
10 they are simply making decisions on which is the more  
11 remunerative or perhaps less costly alternative for  
12 their cane whether to go to ethanol or to sugar. They  
13 seem insulated from world market price changes (1) by  
14 their overriding concern about ethanol prices and (2)  
15 by currency devaluations.

16 MR. KARAWA: The other question I have is  
17 in your testimony you provided some examples of  
18 distortive sugar policies in Brazil and to some extent  
19 in Mexico. Do you have other specific examples of  
20 other countries in the FTAA?

21 MR. RONEY: Yes, we would be happy to  
22 provide that to the USTR and to the panel. We have



1 had work done several years ago when the FTAA  
2 negotiations first began at USTR's request. We had  
3 work done by an independent firm that profiled the  
4 sugar policies of FTAA countries. We still have  
5 copies of that available. We would be happy to make  
6 those available again.

7 We are in the process of requesting an  
8 update of the nature of sugar policies both in the  
9 FTAA and the rest of the world. We are having that  
10 work done. We have promised that to USTR in the  
11 context of the WTO negotiations. We would be happy to  
12 make that work available to this panel as soon as it's  
13 available which should be early next month.

14 CHAIRPERSON SURO-BREDIE: Could you send  
15 that if at all possible electronically to  
16 gblue@ustr.gov? We will distribute it internally at  
17 USTR and to the panel. If there are no further  
18 questions, then we thank you very much. The next  
19 witness is Andrew Lavign, Executive Vice President and  
20 CEO of Florida Citrus Mutual.

21 MR. LAVIGN: Good morning, Madam  
22 Chairperson, members of the committee, I'm Andy

1 Lavign, Executive Vice President and CEO of Florida  
2 Citrus Mutual, joined this morning by Matt McGrath,  
3 our direct counsel from the firm of Barnes, Richardson  
4 and Coleman here in Washington, D.C.

5 Mutual is a voluntary cooperative  
6 association with more than 11,600 growers of citrus  
7 processing and fresh consumption. We represent more  
8 than 90 percent of Florida's citrus growers accounting  
9 for over 80 percent of all oranges grown in the U.S.  
10 for processing into juice and other citrus products as  
11 submitted comments in full testimony to you previously  
12 and a revised copy there and all work to shorten the  
13 comments here this morning.

14 It's quite clear by now that any reduction  
15 in the U.S. OJ tariff applicable to Brazil would  
16 devastate the U.S. industry that grows oranges for  
17 processing. The Florida citrus industry accounting  
18 for \$9.13 billion in industry output, \$4.18 billion in  
19 value added activity and over 89,000 jobs in the state  
20 cannot sustain the impact of tariff elimination for  
21 the world's largest, most highly developed citrus  
22 producing country, Brazil, whose entire existence is

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1 based or built on exportation of as much juice as it  
2 can produce to the world's most developed and  
3 lucrative markets, U.S. and Europe.

4 Our industry is caught in a bind with  
5 which the multi-lateral trade negotiating structure  
6 seems ill equipped to deal with. The circumstances of  
7 that bind demands special consideration for the citrus  
8 sector in connection with any NAFTA or other trade  
9 agreement that includes Brazil as a party.

10 The polarization of the global OJ  
11 consumption in the U.S. and Europe and the  
12 polarization of production in Brazil and the United  
13 States principally Florida are unique in defining  
14 characteristics for this industry. There are some  
15 charts attached to the back of the comments there that  
16 further highlight that.

17 World OJ consumption is concentrated  
18 chiefly among two regions, the U.S. and the European  
19 Union with Canada being a distant third. In addition,  
20 concentration of production among the five large  
21 Brazilian orange juice processors has enabled them to  
22 place tremendous downward pressure on orange prices in

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1       Brazil.   The price of Brazilian frozen concentrated  
2       orange juice or FCOJ in the U.S. in the commodities  
3       futures price of OJ have declined and locked step  
4       during the last decade in tandem with the rapid  
5       expansion and concentration of Brazil's OJ industry.  
6       While we have been encouraged to look to market  
7       expansion and export growth as the answer to our  
8       Brazilian challenge, the marginal benefit of exporting  
9       a few additional containers of U.S. orange juice to  
10      South and Central American markets which have been  
11      historically low demand would immediately be rendered  
12      meaningless if the U.S. OJ tariff is reduced thus  
13      crippling the entire U.S. industry that grows  
14      processing oranges.

15               Brazil's OJ industry is one of the most  
16      advanced agricultural industries in the world.   The  
17      Brazilian oligopoly owns an entire fleet of tanker  
18      ships which haul over 80 percent of the OJ offered on  
19      the world market generating for Brazil approximately  
20      \$1.5 billion in U.S. currency each year.   These are  
21      not the marks of a developing industry but a highly  
22      industrialized state-of-the- art industry that resides

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1 in a developing country where it can exploit the  
2 underdeveloped economic, political and social  
3 conditions that persist there.

4 The Brazilian citrus industry is not  
5 subject to enforcement of the same child labor laws  
6 and other labor standards that are enforced in the  
7 U.S. as well documented by the U.S. Department of  
8 Labor. In addition, Florida orange growers are held  
9 liable for any degradation to the land, water or air  
10 that may result from their operations. EPA has more  
11 stringent requirements for the registration of agra-  
12 chemicals which must undergo more rigorous testing to  
13 insure their safety over those products used in  
14 Brazil.

15 Currency devaluations, another unnatural  
16 advantage, cannot be ignored. Brazil's OJ sales all  
17 destined for export were denominated in U.S. dollars  
18 thus devaluation does not directly affect the terms of  
19 trade for Brazilian orange juice. However it does  
20 affect the actual cost of labor and other domestic  
21 production inputs which are denominated by rials by  
22 making those inputs cheaper relative to the dollar

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1 price paid for the orange juice.

2 If the U.S. orange juice tariffs are  
3 reduced or eliminated, the price of U.S. imports in  
4 bulk FCOJ from Brazil as well as the futures contract  
5 prices of FCOJ and the U.S. wholesale price for orange  
6 juice would fall rapidly. The U.S. supply of juice  
7 oranges is highly inelastic because they are a  
8 natural, perishable product whose supplies are  
9 primarily dictated by the number of productive trees  
10 in the U.S. and variable growing conditions that  
11 impact that production.

12 Capacity utilization in citrus growth is  
13 almost always 100 percent. Supplies cannot be  
14 manipulated in the short run in response to price.  
15 Thus given the inability of orange supplies to respond  
16 to juice prices, the U.S. entire price of juice oranges  
17 would immediately plummet and in turn cause grower  
18 rates of return to fall well below the break even  
19 point resulting in widespread grove closures. Those  
20 grove closures would leave unemployed over 42,000  
21 grove workers in Florida alone and jeopardize the  
22 existence of all U.S. juice extractors and processors

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1       that demand on domestic citrus fruit. It would also  
2       have grave consequences for nurseries, chemical  
3       suppliers, irrigation and harvesting equipment  
4       manufacturers, banks, insurance companies, freight  
5       companies, local tax basis and so on.

6               Finally we have detailed in our submission  
7       the striking contrast between citrus and many other  
8       agriculture commodities with respect to cost to  
9       taxpayers. Citrus does not benefit from grain box  
10      subsidies and its tariff contributes to the overall  
11      economic welfare both the U.S. producer and consumer.  
12      Elimination of the tariff will have little or no  
13      impact on economic development in Brazil or elsewhere,  
14      contributing only to the enrichment of a small number  
15      of traders and foreign processors, locking in a global  
16      monopoly while the consumer price continues to rise  
17      divorced from the input costs. This is hardly an  
18      advertisement for the benefits of any free trade  
19      agreements.

20             In conclusion, Florida Citrus Mutual  
21      understands that free trade in many industries  
22      including many agricultural industries leads to

1 increased competition, eventual price benefits to the  
2 consumers and overall global economic benefits.  
3 Unfortunately free trade cannot deliver these rewards  
4 to such a concentrated, polarized global industry  
5 especially one in which the developing country's  
6 industry is in fact already the most highly developed  
7 in the world. Florida Citrus Mutual appreciates the  
8 opportunity to explain to the Interagency Trade Policy  
9 Staff Committee the unique global structure of the  
10 orange juice industry and the negative economic  
11 effects that would occur as a result of U.S. tariff  
12 elimination or reduction. Thank you.

13 CHAIRPERSON SURO-BREDIE: Thank you, Mr.  
14 Lavign. I had a couple of questions and then I'll  
15 defer to my Ag colleagues who know a lot more about  
16 orange juice than I do. I was fascinated by your  
17 comment the entire existence of Brazil was depended  
18 upon orange juice. What is the percentage of total  
19 exports of Brazil that are orange juice exports?

20 MR. LAVIGN: Excuse me. Total exports  
21 versus just OJ exports?

22 CHAIRPERSON SURO-BREDIE: Right. Total



1 exports of Brazil, what percentage is orange juice?

2 MR. LAVIGN: Madam Chairperson, I don't  
3 have that number but I can get that to you. I think  
4 what I was saying and I may have misspoke there. If  
5 you look at that charts in our presentation, over 80  
6 percent and in most cases over 90 percent of their  
7 production is exported in orange juice. I was not in  
8 any means trying to compare that to other exports that  
9 they make. I must have misspoken there.

10 CHAIRPERSON SURO-BREDIE: Thank you. The  
11 other question I had and again this is from sheer  
12 ignorance I note from your chart that Brazil exports  
13 is responsible I guess here for 81 percent of orange  
14 juice exports, world orange juice exports. Can you  
15 explain why the world production of orange juice, the  
16 chart above is 41 percent but that we only export  
17 eight percent?

18 MR. LAVIGN: Principally the U.S. market  
19 is probably the most highly developed given that the  
20 industry was based here in Florida and in the U.S. and  
21 built this market and then worked to help build the  
22 European market. As I mentioned, it's essentially two

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1 markets, the U.S. and Europe. So depending on the  
2 market supply in Brazil and the U.S. production,  
3 Brazil will choose either to come to the U.S. or come  
4 to Europe. But the U.S. consumes 92 percent of  
5 Florida's production here in the U.S. either for FCOJ,  
6 reconstituted or not-from-concentrate juice. Brazil  
7 on the other hand exports in excess of 90 percent of  
8 theirs and consumes very little domestically. So it's  
9 principally just an export market.

10 CHAIRPERSON SURO-BREDIE: Do we use any  
11 inputs from Brazil in our orange juice?

12 MR. LAVIGN: We do use some inputs  
13 depending on the production each year. Citrus is no  
14 different than any other agricultural production. The  
15 quality of the juice varies year to year given  
16 weather. So sometimes we need additional. Sometimes  
17 like this year, Brazil needs additional to supply some  
18 of their demand. But unfortunately they control that  
19 market in the international arena in pricing as I  
20 mentioned in my previously submitted comments.

21 CHAIRPERSON SURO-BREDIE: Thank you, Mr.  
22 Lavign.

1 MS. CHATTIN: In your testimony and in the  
2 more elaborate summary comments that you made, you  
3 seem to downplay entirely the not-from-concentrate  
4 market which at least as I go to the grocery store  
5 seems to be growing enormously in the U.S. and I would  
6 think in the Canada and as Mexico's income grows. I  
7 mean it's definitely I think a more middle class  
8 product.

9 But I've seen just in the Safeway an  
10 enormous growth in that product and in visiting  
11 friends and things. It seems like it's not just a  
12 Washington phenomena. It's all around the U.S. There  
13 is a growing market for that. And you seem to totally  
14 discount that avenue as a growth market for the  
15 Florida industry in your testimony. You downplay the  
16 impact of it. And I just don't understand why.

17 MR. LAVIGN: Well, when we look at the NFC  
18 market, obviously that's an attractive one for us as  
19 we develop it. But if you look at it from a straight  
20 cost issue, you are looking at another expanded cost  
21 of transportation. Whether it's domestic or whether  
22 it's Brazilian or whether it's trying to come to the

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1 U.S. or EU, you are shipping six times the amount you  
2 would for frozen concentrate. So that cost is  
3 dramatically increased. But it's not -- if you look  
4 at the growth of NFC, it's fairly, I would say, eight  
5 to nine percent. It's not increasing the market as  
6 far as orange juice consumption overall.

7 But when a grower sells his oranges, he  
8 doesn't sell his oranges for FCOJ or NFC or  
9 reconstituted orange juice. So there is no economic  
10 benefit one way or the other for the grower. The  
11 processor or the handler purchases those oranges to  
12 make into orange juice. So if he is selling it for  
13 the orange juice that goes into frozen concentrate,  
14 that is relatively cheaper in the marketplace, he's  
15 not getting any difference between that or what the  
16 processor may get for NFC.

17 So the true benefit there does not come  
18 down to the grower. That decision is made by the  
19 processor, which is the one who benefits ultimately  
20 from that. I think, as you are well aware, 50 or so  
21 percent of the production processing in the State of  
22 Florida is owned by Brazilian interests. They control

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1       that market and are able to substitute product at the  
2       will of what they need and demand and the product  
3       coming in the gate. At that point, when it leaves the  
4       farmer's groves, they have no control of how that's  
5       used and receive no benefit one way or the other,  
6       whether it's FCOJ or NFC.

7                   MS. CHATTIN: Yes, but if the demand for  
8       not-from- concentrate is growing and the demand for  
9       FCOJ is leveling off or they are substitutes in a way,  
10      then I would think that even if the grower gets the  
11      same price, if there's a greater demand for the not-  
12      from-concentrates, the demand for oranges for not-  
13      from-concentrate is going to keep growing or keep  
14      steady.

15                  And I would just think that the  
16      transportation costs to ship water from Brazil to  
17      Florida, even though it costs something to ship the  
18      not-from-concentrate from Florida to Washington, D.C.  
19      or New York, Brazil's going to have what -- eight or  
20      ten thousand miles of additional transportation costs  
21      if they would even attempt to enter into that market  
22      with the oranges produced in Brazil. So I'm just

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1       wondering if the results are as dramatic as are in  
2       your testimony.

3               MR. LAVIGN: Well, we feel that they are,  
4       because if you look at the divergence of the market  
5       price with respect to the futures market and  
6       everything else, the grower is not seeing that price  
7       in the marketplace of consumers choosing possibly a  
8       reconstituted product or an NFC product over that.  
9       The processor sees that difference. We don't see as  
10      NFC continues its gradual growth and the FCOJ  
11      declines, any increase of the price to the grower. In  
12      fact, we see a decrease, because of the ability of the  
13      Brazilian monopoly to manipulate where a product goes,  
14      whether it's to the U.S. market or the European  
15      market. But it's one of those two markets and they  
16      are able to control that, because of their vast -- and  
17      again I outline that in my August statement -- their  
18      vast structure that was developed as far as tanks and  
19      ships and those kinds of things.

20               We're looking at it, I think, from our  
21      standpoint as a grower issue, because the growers are  
22      the ones who stand to lose here, not the five major

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1 processors in Brazil or those that are participating  
2 in the processing in Florida.

3 CHAIRPERSON SURO-BREDIE: I have an  
4 additional question just related to that. How many  
5 processors are there that are American-owned companies  
6 in the United States?

7 MR. LAVIGN: Right now, there are  
8 essentially 17 processors. Of those, I believe --  
9 they may have more than one plant -- we have six that  
10 are domestic. And one of those -- there was a French  
11 company involved in it and it was just purchased by a  
12 Brazilian interest, so that just consolidated that  
13 even further.

14 CHAIRPERSON SURO-BREDIE: We have an  
15 additional question from the Department of  
16 Agriculture.

17 MR. KARAWA: To follow up on one of the  
18 questions which the Chair asked, in your testimony,  
19 assuming Brazil's FCOJ exports to the United States  
20 increase due to a lower U.S. tariff, would that mean  
21 that Brazil would shift away from supplying the  
22 European market? If so, would the U.S. supply that

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1 market? Is Brazil capable of supplying both the EU  
2 and the U.S. markets? Lastly, are there other  
3 existing OJ margin markets that the U.S. can supply?

4 MR. LAVIGN: I'll answer that two, three,  
5 one. Yes, Brazil has, as we all well know, plenty of  
6 arable land to plant and have been doing so as they  
7 deal with various pest pressure issues that we are  
8 dealing with here in the U.S. If we go in to look at  
9 various scenarios, much like we did with GATT and  
10 NAFTA, a phase-down over 15 years, what you do is you  
11 give them a planting schedule, and all they do is go  
12 in and start planting trees, so that in five to seven  
13 years -- depending on the variety -- is the typical  
14 amount of time for a tree to be viable with respect to  
15 harvesting a crop off of it.

16 You give them planting schedules so that  
17 they will meet the demand. But the marketplace is  
18 America and Europe. There may be some foreign market  
19 opportunities, but we have not seen any significant  
20 growth in any of them, as my testimony shows there.

21 It is, as Ms. Chattin said, a more upscale  
22 product in the international arena, so you are going



1 to developed countries principally. The market growth  
2 is in the U.S., in the EU, and potentially in some  
3 other countries. But when 92 percent of the current  
4 consumption is between those two countries, it's hard  
5 to just take a whim and say, okay, we'll reduce it and  
6 then try to open these other markets and hope their  
7 economies come up.

8           Unfortunately, growers can't take that  
9 hope. They have to be able to remain competitive. We  
10 are trying to work on some of those opportunities  
11 obviously, but they have not developed, whether we  
12 look at Mexico after NAFTA and others -- Japan. Those  
13 markets have not come up at all. They remain stagnant  
14 or decline in actual consumption of orange juice.

15           MR. KARAWA: Will you clarify again the  
16 period Brazil will take to this planting period?

17           MR. LAVIGN: In any tree fruit, what you  
18 are looking at is a time period that you have to put  
19 trees in the ground. If you gave them a scenario of  
20 15 years in a phase-down, like there was in GATT and  
21 NAFTA, 15 percent, you said in 15 years you'll have  
22 additional opportunity in the U.S. market, because it

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1 will be more difficult for the U.S. to supply that,  
2 because you have made Florida growers less  
3 competitive.

4 And in doing that, you have said, okay,  
5 start planting your trees seven years out, because at  
6 that point, when it reaches that amount, you are going  
7 to have additional opportunity here. They have the  
8 ability to plant additional groves down there. They  
9 have shown that without a problem.

10 CHAIRPERSON SURO-BREDIE: Thank you very  
11 much, Mr. Lavign.

12 MR. LAVIGN: Thank you.

13 (Discussion off microphone.)

14 CHAIRPERSON SURO-BREDIE: Our next witness  
15 is Mr. Robert Vastine, President of the Coalition of  
16 Service Industries. Welcome.

17 MR. VASTINE: Thank you very much. It's  
18 a pleasure to be here.

19 CHAIRPERSON SURO-BREDIE: I have something  
20 just to add to the transcription, that we've been  
21 joined by Joe Papovich, the Assistant USTR for  
22 Services, Investment and Intellectual Property. All

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1 the rest of our panel members are the same. Thank  
2 you.

3 MR. VASTINE: Thank you very much. My  
4 first point is that the Coalition of Service  
5 Industries very strongly supports the Administration's  
6 efforts to secure an FTAA. That may come as welcome  
7 news in light of the previous two witnesses. We have  
8 from the outset very strongly supported this effort  
9 and have participated actively in the Business Forums  
10 of the Americas as they are held every year in various  
11 Latin capitals.

12 We have built a network of like-thinking  
13 business organizations throughout Latin America in an  
14 effort to try to generalize, to build support  
15 throughout the hemisphere in business communities for  
16 these negotiations. This is called the RedServ for  
17 the network of services of the hemisphere. We hope  
18 therefore that we've made a contribution to supporting  
19 the negotiations in services and are eager to proceed  
20 with the FTAA, now that trade promotion authority has  
21 been adopted.

22 Specifically we seek an agreement that

1 achieves maximum liberalization of trade in all modes  
2 of supply and services. I'm delighted to see you  
3 here, Joe, because I was afraid I would refer to mode  
4 of supply and services, and no one would know what I  
5 was talking about. Provide rights of establishment  
6 with a majority ownership in national treatment,  
7 allows investors to establish in whatever corporate  
8 form is most appropriate to their business objectives,  
9 provides for protection of acquired rights, creates a  
10 free and open commercial environment for the  
11 development of electronic commerce, insures that  
12 market access commitments apply no matter what  
13 technology is used to deliver a service, promotes  
14 domestic regulatory best practices, promotes  
15 transparency of regulatory processes, avoids a service  
16 of safeguard, explicitly acknowledges the importance  
17 of maintaining free flows of financial and other  
18 information, and concludes by 2005.

19 I'm going to elaborate on a few points.  
20 One of the most important issues facing the services  
21 negotiators in this agreement is what modality to use  
22 in scheduling commitments. At the risk of engaging in

1 services jargon, the modality that's most suited to  
2 achieving the most liberalization is called the top  
3 down or negative list approach. That approach assumes  
4 that everything is liberalized in a given category of  
5 services, unless it's specifically reserved. This is  
6 the modality that's used in the case and is being used  
7 in Chile, bi-lateral in the case of Singapore, and was  
8 used in the case of NAFTA. It is more efficient.

9 One of its virtues is that it forces the  
10 country that wishes not to liberalize to state  
11 explicitly what it is reserving and forces it to  
12 justify those reservations with the other negotiators.  
13 This is a more exigent process for those who wish to  
14 reserve, those who wish not to liberalize, and it  
15 should result in greater liberalization.

16 Acquired rights is an issue of importance  
17 in services. What do we mean by "acquired rights"?  
18 In many cases, corporations have in certain countries  
19 secured rights to ownership, licenses, rights to  
20 operate, rights to do business that are exclusive to  
21 that corporation, and that are not shared yet by other  
22 entrants in the market. Often these have been won

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1 over a long period of time. Often they exist for  
2 historical reasons.

3 In some cases, the countries that have  
4 given these rights to certain corporations or  
5 industries have not wished to include them in their  
6 commitments in the new trade agreement, so that the  
7 net effect would be that Company X would emerge from  
8 an accession agreement or from a trade agreement or  
9 from the FTAA with fewer rights than when it went in.  
10 It would not be able to retain its access in that  
11 given market. So the ability to retain the rights  
12 that you've acquired, that companies acquired over  
13 time, through the negotiation of a new trade agreement  
14 is quite important for some companies.

15 In Services, we know that one of the  
16 principal forms of trade is through investment. It's  
17 an interesting way of thinking of trade. Foreign  
18 direct investment -- that is to say, the establishment  
19 of bricks and mortar presence in a given country -- is  
20 often essential to trading and services, to selling a  
21 service. You can't sell a life insurance policy in  
22 India from your office in New York. You have to

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1       establish networks and agents, bricks and mortar  
2       operations, personnel in India or China or wherever.  
3       Thus the issue of commitments to freedom of  
4       investment, to what we call commercial presence or  
5       mode three in the Services business is really  
6       essential.

7               Now in the GATTs, these mode three rights  
8       were secured in the WTO, in the GATT, as part of the  
9       overall right secured for trading and services, but in  
10      the NAFTA there was a separate investment chapter.  
11      And we have chosen that route as well in the FTAA.  
12      That chapter has in a sense lagged. There have been  
13      some very major issues there, including investor state  
14      issues, but it is quite important for trade and  
15      services that that chapter include strong rights to  
16      establish a presence and to own a majority share in  
17      that presence, and to establish the business in the  
18      form that makes the most sense for that market,  
19      whether it's a partnership or wholly-owned subsidiary  
20      or whatever it might be. Thus the investment piece of  
21      this agreement is very important.

22             In Services, domestic regulation is a

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1 major issue. If you think of services like financial  
2 services, like telecommunication services, virtually  
3 any service, energy services, are highly regulated.  
4 Thus, domestic regulation -- the quality and the  
5 method by which a foreign operation, a foreign  
6 company, is regulated within a country -- becomes very  
7 important because domestic regulation can in fact  
8 vitiate trade agreements. A country can commit to a  
9 freedom and establishment in its trade agreement, but  
10 by means of regulation effectively prevent that  
11 investment from taking place or, if it does take  
12 place, discriminate against it in favor of competing  
13 domestic suppliers. So domestic regulation becomes  
14 exceptionally important in trade and services.

15 There are two aspects of domestic  
16 regulation that are separate, that are distinct, but  
17 equally important. The first is transparency.  
18 Transparency like we do in this country -- which means  
19 the Administrative Procedures Act -- we are all very  
20 used to it. The fact is that very few other countries  
21 agree with that. Very few other countries have gone  
22 anywhere near the lengths we have in establishing

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1       these open transparent procedures in their domestic  
2       law and regulation. We are unique in that.

3               On the other hand, it's exceptionally  
4       important. If you do not know -- if the regulation  
5       isn't published, if when it is changed you have no  
6       ability to comment on it, if there is no transparency  
7       in the licensing process, for example -- if you do not  
8       know what the criteria are in writing on which a  
9       license to sell insurance or anything else will be  
10      granted -- but your domestic supplier does because he  
11      went to school with the regulator, or because it's a  
12      state monopoly which is also the regulator, the  
13      foreign enterprise hasn't got a chance.

14             So we are very grateful that USTR and the  
15      Government, you all, have supported -- and I know that  
16      the Trade Staff Committee has considered this -- so we  
17      are very appreciative of the fact that we have put  
18      forward in Geneva and elsewhere a very strong request,  
19      a very strong position, on the transparency issue,  
20      seeking -- and a very difficult job it will be too --  
21      to get commitments to the sorts of transparency  
22      disciplines that we know and enjoy here. I'm running

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1 out of time.

2 So quickly -- quality of regulation is  
3 important too. So often -- regulations should be  
4 devoted to insuring fair and open markets, not trying  
5 to regulate price and product. On safeguards, there  
6 may be safeguards for goods. Look what a disaster it  
7 has brought. We don't want them in Services. Period.  
8 Joe Papovich has a commitment to safeguards because,  
9 I think, they exist for goods and therefore he thinks  
10 they should exist for the services. I know that's  
11 wrong. I know that's not right. But we've been  
12 arguing about it in Geneva for years, ever since the  
13 Uruguay Round, and it's our fervent hope and  
14 expectation the United States negotiators will be able  
15 to keep this out of the FTAA. It's nothing but  
16 trouble.

17 Temporary entry, a principal means by  
18 which trade and services conducted is through people.  
19 This is mode four. The transfer of people from one  
20 place to another. Consultants, lawyers, doctors,  
21 teachers, going back and forth. We need, industry  
22 needs, a special visa category that permits these

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1 experts to move quickly from country to country to  
2 pursue specific limited assignments, troubleshooting  
3 assignments, no matter where they may be around the  
4 world. This is essential to our consulting firms, our  
5 law firms and our accounting firms, who need to shift  
6 people around the world quickly in order to service  
7 their clients. Thank you very much for the  
8 opportunity.

9 CHAIRPERSON SURO-BREDIE: Thank you. Our  
10 first question will be asked by Joe Papovich.

11 MR. PAPOVICH: Thanks, Bob. That was very  
12 interesting. The first question is -- in your  
13 testimony you talked about how the FTAA should treat  
14 federal and sub-federal measures equally. We wondered  
15 if you were aware of any sub-federal barriers outside  
16 of the U.S. in the FTAA region that your membership  
17 would like to see addressed.

18 MR. VASTINE: Well, that's very  
19 interesting, because I know that there are some strong  
20 federal systems. I just have to say that I will have  
21 to get back to you on that. We don't know. I don't  
22 know off the top -- that might be the case.

1 MR. PAPOVICH: If you could reflect on  
2 that, that would be good.

3 PARTICIPANT: (Off microphone.)

4 MR. PAPOVICH: It just would be useful to  
5 know, when you say you think we should treat them  
6 equally, you have specifics in mind, aside from  
7 Ireland, of course.

8 On the question of the quality of  
9 regulation and not the transparency you noted that  
10 efforts to improve the quality of regulation should be  
11 pursued on a specific sector basis. In your paper,  
12 you refer to telecom professional services and  
13 financial services. Are there other sectors where  
14 quality of regulation is important or are these the  
15 three?

16 MR. VASTINE: I think energy services  
17 would be one. I think the energy services folks, the  
18 energy services coalition, with whom we work closely,  
19 is actually embodied in its negotiating proposals in  
20 Geneva, some regulatory quality issues.

21 MR. PAPOVICH: On the question of  
22 temporary entry, you've suggested that NAFTA annex

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1       could be improved by applying disciplines to all  
2       services sectors and I think you say with respect to  
3       business persons. Does your suggestion relate to all  
4       categories for temporary entry, all categories of  
5       business persons or would it be specific to  
6       professionals?

7               MR. VASTINE: This is a nice issue. We're  
8       really talking about professional level of people not  
9       necessarily professional as it might be defined for  
10      example the doctor, lawyer. It needs work and I think  
11      if I had written our proposal for the temporary entry  
12      on our larger proposal, I would be able to be a little  
13      more explicit. But I think the quick answer is that  
14      it's intended to apply to senior level individuals who  
15      may be managers, professionals in the true sense,  
16      lawyers, accountants, consultants.

17             Then there's another category that we try  
18      to embrace. It's very difficult to do this but there  
19      is a category of people who are not professionals per  
20      se. You would not call them professionals by virtue  
21      of their degrees but you would call them near  
22      professional or very highly skilled in a special

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1 category because of the extent of their training.  
2 Often this training is not available in a school. It  
3 has to occur in a corporation in the field and all on  
4 the job doing the work.

5 The best example that we have of this is  
6 oil field workers especially in the drilling  
7 industries, deep sea and other, who are very  
8 technically skilled but who can't really be called  
9 professionals. They are not necessarily engineers.  
10 Some of them may be but they are workers who have  
11 learned a craft, a trade, a skill. So we want to  
12 embrace that sort of person and we have a language in  
13 our proposal to try to do that.

14 MR. PAPOVICH: Thanks. I have one last  
15 question. In your paper you talk about how your  
16 objective is to achieve liberalization across the  
17 widest possible range of services. Do you have  
18 anything to suggest on how we should treat publicly  
19 provided services? Should we use the same definition  
20 as we have in the GATTs? Do you have any thoughts on  
21 whether that definition should be improved, modified?

22 MR. VASTINE: I hadn't thought of that.

1 The first point is that I think we have to do what we  
2 must do to reassure those who believe that trade  
3 negotiations are means of undermining essential public  
4 services, whatever they may be. That's not what trade  
5 negotiations are about. Is this what you are  
6 referring to?

7 MR. PAPOVICH: Yes.

8 MR. VASTINE: And the GATTs does a fairly  
9 good job of that I think but apparently not a good  
10 enough job to assure those who are concerned that  
11 their interests will not be in some sense violated by  
12 negotiators pursuing the mandates of the GATTs. But  
13 on the other hand, I've heard from other negotiators  
14 from other countries, our friends in the UK for  
15 example, Malcolm McKinnon that there has been  
16 discussion in Geneva on how to clarify this aspect of  
17 the GATTs in order to reassure those constituencies  
18 who are concerned.

19 The report is that all the remedies are  
20 worse than the existing language or that nobody can  
21 find something that is in a sense better. That  
22 doesn't mean that the search should stop but it is an

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1 interesting question as applied to the FTAA. I never  
2 thought of that. Thank you.

3 MR. PAPOVICH: Those are all my questions.  
4 Thanks Bob.

5 CHAIRPERSON SURO-BREDIE: If you would  
6 like to submit additional information, you can send it  
7 to gblue@ustr.gov. We'll send it to the panelists.  
8 Thank you. The next witness is Mr. Calman Cohen,  
9 President of the Emergency Committee for American  
10 Trade. Welcome.

11 MR. COHEN: Thank you for the opportunity  
12 to be here today. I am Calman Cohen, President of  
13 ECAT, an association of chief executive officers of  
14 leading U.S. business enterprises. One of ECAT's top  
15 priorities is the trade investment negotiations to  
16 create the FTAA guided by the objectives of the  
17 recently enacted TPA Authority Act, ECAT supports our  
18 negotiators' efforts to achieve a commercially  
19 meaningful FTAA.

20 Let me begin the discussion on the issue  
21 of investment. Due to increasing global economic  
22 integration, the livelihood of more workers and more



1 companies around the globe depends on cross-border  
2 investment than ever before. As the largest  
3 destinations for and source of foreign direct  
4 investment, the United States has much to gain from  
5 successful negotiation.

6 Documented in ECAT's recent study, Global  
7 Investments, we note that the critical importance of  
8 U.S. investment abroad over the last 20 years for the  
9 United States, its companies and its workers has  
10 spurred U.S. productivity by promoting research and  
11 development, invest of physical capital in new  
12 technology. The payoff of U.S. investment is in  
13 higher paying jobs and a higher standard of living in  
14 the United States. Despite the enormous growth in  
15 investment over the previous three decades, U.S.  
16 investment abroad has been growing more slowly  
17 recently as has foreign investment in the United  
18 States. To jump start economic growth, it is  
19 important to spur increased investment. A strong  
20 investment chapter in the FTAA could do just that.

21 U.S. investments in and from the Western  
22 Hemisphere are important but with the exception of the

1       NAFTA countries, have not varied much over recent  
2       years. We also have bi-lateral investment treatises  
3       with only three of the top ten recipients of foreign  
4       investment excluding Canada in the region. Just as  
5       the investment rules included in chapter 11 of NAFTA  
6       help promote the significant growth in investment  
7       among the United States, Mexico and Canada, strong  
8       investment rules in the FTAA would help improve the  
9       investment climate in many of the FTAA negotiating  
10      countries in a manner that could attract new  
11      investment.

12               Despite some of the controversy that has  
13      arisen on the topic of investment in recent years,  
14      both the developed and developing world have  
15      increasingly recognized in recent years the importance  
16      of private international capital flows, and foreign  
17      direct investment in particular as well as the need to  
18      establish the right investment climate through strong  
19      protections. The March 2002 Monterrey Consensus  
20      emphasized that countries need to attract investment  
21      inflows through the development of a "transparent,  
22      stable and predictable investment climate, with proper

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1 contract enforcement and respect for property rights"  
2 and of "economic policy and regulatory frameworks for  
3 promoting and protecting investments." Without these  
4 protections, foreign investment will simply not flow  
5 to the countries that need it most.

6 For these reasons like the U.S. Congress,  
7 ECAT supports the development of a strong investment  
8 chapter as part of the FTAA incorporating all of the  
9 fundamental investment protections included in U.S.  
10 BITS and NAFTA Chapter 11 as well as the innovations  
11 sought in the Bipartisan TPA Act of 2002. I have  
12 appended to my statement detailed commentary on the  
13 specific guarantees that should be included in an FTAA  
14 investment chapter, including those provisions  
15 discussed in the TPA Act, including no discrimination,  
16 treatment in accordance with international law, prompt  
17 compensation for expropriation, protection for the  
18 movement of capital, no performance requirements and  
19 resolution of disputes.

20 Let me just briefly move on to some other  
21 issues that I know many of the others who are  
22 appearing before you will be discussing. Also of

1 great importance to ECAT member companies are the  
2 negotiations to liberalize trade and goods and  
3 services which will create new opportunities to expand  
4 growth and production in the U.S. and increase  
5 efficiency and rationality in the marketplace. It is  
6 important that the final agreement eliminate tariff  
7 and non-tariff barriers for industrial products  
8 including by eliminating tariffs to zero as quickly as  
9 possible for major U.S. products such as information  
10 technology and auto-visual products as well as key  
11 import sectors that are important to consumers such as  
12 toys and textiles and apparel taking into account the  
13 need for some adjustment periods, achieve significant  
14 liberalization through the services sector based on a  
15 negative list approach as Bob Vastine just suggested  
16 where only limited exceptions are permitted, remove  
17 tariffs and non-tariff barriers to food trade and all  
18 levels of production to distribution, ECAT's so-called  
19 food chain proposal, insure that trade and investment  
20 rules promote and do not inhibit the growth of  
21 electronic commerce and information technology  
22 products and services, improve the operation of trade

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1 remedy laws within the hemisphere particularly in  
2 light of the new dynamics that would be created in an  
3 FTAA.

4 On intellectual property rights, we also  
5 note that it's an area of significant concern to our  
6 companies particularly given that USTR has identified  
7 14 of the other 33 negotiating countries in 2002 as  
8 part of its special 301 report. Losses suffered by  
9 U.S. firms as a result of inadequate protection of IPR  
10 span many sectors. ECAT member companies therefore  
11 support the negotiation of a strong and enforceable  
12 chapter in IPR including with respect to on-line  
13 intellectual property. In particular ECAT member  
14 companies seek intellectual property protections  
15 similar to that found in U.S. law as Congress clearly  
16 directed in the negotiating objectives on intellectual  
17 property in the Trade Promotion Authority Act. ECAT,  
18 in conclusion, supports the Administration's efforts  
19 to advance these negotiations and looks forward to  
20 working with the Administration in all stages of the  
21 process. Thank you.

22 CHAIRPERSON SURO-BREDIE: Thank you, Mr.

1 Cohen. I'll turn to Joe Papovich.

2 MR. PAPOVICH: First thank you very much,  
3 Cal. It was a very interesting presentation  
4 particularly the appendix at the end. That's very  
5 timely. In fact, it's extremely timely as we are  
6 picking up on the new directives in the TPA with  
7 respect to how to implement our investment provisions.  
8 I would take it then that these would be ECAT's  
9 considered views on how to address these various  
10 topics.

11 MR. COHEN: Absolutely and they are based  
12 as you can imagine not only on the wish list of our  
13 member companies but also on the directives from the  
14 U.S. Congress on which most of these issues were very  
15 extensively debated and which in a very definitive  
16 fashion that Congress has spoken.

17 MR. PAPOVICH: My only question for you is  
18 one that may be not very easily answered. You talk  
19 about in your testimony about how the negotiations  
20 should obtain the elimination of what you call  
21 "unnecessary restrictions on cross-border  
22 transactions." This word "unnecessary" is always

1 extremely difficult to deal with. Any thoughts on  
2 that? What do you consider "unnecessary restrictions"  
3 as opposed to necessary ones?

4 MS. CHATTIN: A good question deserving a  
5 good answer. From our perspective, many adjectives  
6 probably could be used as synonymous. Arbitrary,  
7 superfluous, duplicative. From our perspective, it  
8 probably would take a Thesaurus to get to all aspects  
9 of what are unnecessary. But trying to look at the  
10 objective that we have in mind which is the allowance  
11 for clear, unencumbered trade as long as it's  
12 consistent with national security and other prime  
13 objectives, we would look at almost any regulation or  
14 any provision and judge them whether or not it is  
15 necessary or unnecessary.

16 CHAIRPERSON SURO-BREDIE: Just for the  
17 transcriber, Bennett Harman has joined the panel.

18 MR. HARMAN: Thank you. I think I have a  
19 couple of questions if I may. You made reference to  
20 the non-tariff barriers as a hurdle in trading goods  
21 and listed some. This is an area that also sometimes  
22 is a little bit hard to define. It gets fairly

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1 specific in terms of crafting a discipline that is  
2 appropriate to get at the practice and not easily be  
3 circumvented. I was wondering if you could perhaps  
4 submit any more detail that you have on the practice  
5 in question and elaborate further including country-  
6 specific examples so that we can be sure that we are  
7 negotiating the right disciplines.

8 MS. CHATTIN: I am delighted to do so. We  
9 will do that.

10 MR. HARMAN: Then my second question has  
11 to do with your suggestion for an anti-corruption  
12 proposal. This week in the FTAA we have put forward  
13 an anti-corruption proposal in the government  
14 procurement negotiations. We are pleased to have your  
15 support. However, we have encountered resistance in  
16 the past with this type of initiative unfortunately.

17 We were wondering if you have specific examples that  
18 you could help by providing us to help us illustrate  
19 the benefits to these countries of such provisions to  
20 help us in a sense sell this approach to the countries  
21 in the hemisphere.

22 MR. COHEN: We could put something



1 specifically together in terms of examples. Obviously  
2 from our perspective a system that is not rife with  
3 corruption is one that is conducive to expanded  
4 investment in commerce. That is truly the clearest  
5 case that can be made. It's not insignificant that  
6 there is a direct correlation between the ability and  
7 willingness of companies to invest in countries where  
8 there is a history and a current environment of clean  
9 commercial transactions. In those governments where  
10 that is lacking, our companies frequently decide not  
11 to invest.

12 I remember recently getting a call from  
13 one of the member companies of my organization about  
14 whether it was advisable for them to place a major  
15 facility in a specific area of the world which had  
16 problems where various groups were demanding payments  
17 in order to provide protect for their investment.  
18 They very much questioned whether it was advisable for  
19 them to make that investment. We discussed it at  
20 length. They have to do that risk analysis. We'll  
21 try to put some specifics further for you and perhaps  
22 that will be helpful.

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1 MS. BENDER: I had a question on the  
2 intellectual property rights. In your testimony you  
3 talk about that you are looking to build upon and  
4 strengthen the TRIPS and the NAFTA in respect to the  
5 intellectual property rights provisions. I wonder if  
6 you could just elaborate a little bit more on that and  
7 how you see the strengthening of those provisions.

8 MS. CHATTIN: Most generally I would say  
9 that our companies are concerned with the very rapid  
10 transformation in the area of technology right now  
11 where for example on-line services and other  
12 technologies are developing a pace. What they have  
13 urged is that whatever language that you develop in  
14 terms of intellectual property protection most  
15 importantly allow for the evolution of technology and  
16 the evolution of delivery systems so that it is not in  
17 a sense antiquated by the time the various countries  
18 subscribe to the agreement. That is something that  
19 has been emphasized in particular.

20 CHAIRPERSON SURO-BREDIE: I think that  
21 completes our questions. Thank you, Mr. Cohen.

22 MR. COHEN: Thank you very much.

1 CHAIRPERSON SURO-BREDIE: The panel has  
2 been joined by Kimberly Claman of our Investment  
3 Office. The next witness is Mr. Tim Richards, Senior  
4 Manager of GE on behalf of the National Association of  
5 Manufacturers. Welcome back.

6 MR. RICHARDS: Thank you very much. The  
7 National Association of Manufacturers greatly  
8 appreciates the opportunity to testify here this  
9 morning. This is a subject of great current  
10 importance to U.S. manufacturers. It's one of our top  
11 priority areas right now.

12 Our comments today are going to focus on  
13 six areas related to market access in the FTAA that  
14 are particularly critical to U.S. manufacturing. These  
15 are the rapid removal of industrial tariffs, the  
16 design of simplified and uniform rules of origin,  
17 removal of non-tariff barriers, elimination of  
18 barriers and conditions on investment, protection of  
19 intellectual property rights and comprehensive and  
20 effective access to government contracts. I'll touch  
21 briefly on each of these six areas but given time  
22 constraints more detailed descriptions of our

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1 positions are contained in our written testimony.

2 First on removal of industrial tariffs, we  
3 firmly believe that that complete elimination of  
4 tariffs is an essential element and a cornerstone of  
5 all free-trade agreements and the FTAA should be no  
6 different. Tariff elimination is a clear cost cutting  
7 win-win opportunity for U.S. manufacturers and our  
8 customers around the hemisphere. To speed the  
9 delivery of the benefits of tariff elimination to all  
10 parties we support the following four key points.  
11 First of all, that the FTAA countries should agree not  
12 to raise tariffs during negotiations, a basic  
13 standstill obligation.

14 Second there should be a substantial  
15 package of sectors, whose tariffs are eliminated  
16 immediately upon the FTAA's entry into force. In our  
17 testimony we provide a list of sectors that have  
18 supported that approach and strongly support the  
19 elimination immediately upon entry into force on  
20 tariffs in their sector.

21 Third for those products whose tariffs are  
22 phased out, we support the use of applied rates as the

1 base from which tariffs will be reduced. We  
2 understand that there has been some progress on that  
3 recently. We hope that that will be possible to be  
4 implemented. That is use applied rates as opposed to  
5 bound rates as the starting point. Fourth, we believe  
6 that the FTAA tariff phaseout schedules should be  
7 front-loaded whenever possible rather than back-  
8 loaded.

9 With regard to rules of origin, this is  
10 complicated area. Our fundamental objective is to  
11 have FTAA origin rules that are objective, transparent  
12 and easy and inexpensive to comply with. At the same  
13 time, they have to preserve the benefits of the FTAA  
14 for company operations and for workers who are based  
15 in the Americas. The ultimate goal should be a  
16 single, uniform set of FTAA origin rules.

17 However we also recognize that many  
18 companies have made investment decisions and have  
19 established trading patterns based upon expectations  
20 about the permanency of existing sub-regional trade  
21 rules. Therefore we believe that there will have to  
22 be some form of transitional period to allow sub-

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1 regional rules such as those that are contained in  
2 NAFTA to be transitioned into broader FTAA framework.  
3 In terms of types of rules for rules of origin, we  
4 believe that the tariff-shift system has proven itself  
5 in the NAFTA and we support the use of that in the  
6 FTAA as the starting point for development of rules of  
7 origin.

8 With respect to non-tariff barriers, we've  
9 discussed two types in our submission. The first  
10 relates to technical barriers to trade and the second  
11 to customs procedures and trade facilitation. On  
12 technical barriers to trade, we believe that the FTAA  
13 should require all of its members to accept and  
14 implement the WTO agreement on Technical Barriers to  
15 Trade, the TBT.

16 The FTAA could be TBT plus by clarifying  
17 a couple of points in the TBT specifically assuring  
18 that standards that are applied in international trade  
19 by the U.S. companies are always acceptable and are  
20 not discriminated against in this hemisphere. So for  
21 instances if there are NAFTA based country standards  
22 and they are used on trade within the NAFTA region, we

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1 believe that those should be acceptable and not  
2 discriminated against within the full FTAA region.  
3 Second that there should be transparency and due  
4 process in national and regional standard setting  
5 bodies.

6 With regard to customs provisions, we  
7 thing that any customs provisions or chapter in the  
8 FTAA must aim to prevent the use of border controls to  
9 unduly limit trade or raise business costs. The FTAA  
10 itself should inscribe some binding obligations that  
11 accomplish that objective. We have listed a number of  
12 these points in our testimony which we could go to in  
13 greater detail if you would like.

14 But the point that we have long supported  
15 and which we feel is one of the most fundamental would  
16 be to implement immediately a two-step entry process  
17 that separates the release of merchandise from final  
18 payment of the duty. This is a basic procedure that  
19 the United States uses that will greatly speed the  
20 process of international trade and will not have any  
21 negative impact in fact on the ability to have  
22 effective border controls.

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1                   Moving on to investment, the recent  
2                   process for approving Trade Promotion Authority  
3                   demonstrated strong bipartisan consensus in the  
4                   Congress for retaining the investment protections  
5                   contained in our Bilateral Investment Treaties and in  
6                   NAFTA's Chapter 11. The NAM strongly backs the TPA  
7                   bill's section on investment. We urge the  
8                   Administration to reflect this strong reaffirmation by  
9                   negotiating an FTAA investment chapter that  
10                  incorporates the core elements of the long-standing  
11                  U.S. approach to investment. That is reducing and  
12                  eliminating barriers, setting high standards of  
13                  investor protection and creating investor-to-state  
14                  dispute settlement procedures. It's also extremely  
15                  important that the FTAA investment chapter provides  
16                  for pre-establishment protection for potential  
17                  investors so that the same rigor can be applied for  
18                  them as is applied for discrimination against current  
19                  investors.

20                  Finally in the investment area, the NAM  
21                  advocates the removal of restrictions on foreign  
22                  ownership in all sectors, subject to the types of

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1 national security and similar exceptions in the NAFTA.  
2 We applaud the FTAA negotiators' decision to use a  
3 negative list approach to listing exceptions to  
4 coverage because we think this gives a better overall  
5 form of coverage.

6 In the area of intellectual property  
7 rights, NAM believes that the FTAA intellectual  
8 property chapter should build upon and strengthen the  
9 rights to find by TRIPS and by NAFTA. Again details  
10 are contained our written submissions but just  
11 touching a couple of points, we support guarantees of  
12 the availability of patent protection for products and  
13 processes in all areas of technology.

14 We believe that international exhaustion  
15 of patent rights should be prohibited. We support the  
16 protection of confidential test data for a minimum of  
17 five years. We support the creation of a mechanism to  
18 facilitate the grant of patents and the registration  
19 of trademarks in multiple countries. We support  
20 measures that will insure the effective and efficient  
21 protection of intellectual property rights and the  
22 enforcement of those rights in all countries.

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1                   Lastly on government procurement, in many  
2                   ways the most important single issue for American  
3                   companies bidding on government procurement contracts  
4                   is the ability to know what the rules are and to know  
5                   that the rules will be applied. So for us the  
6                   development of a government procurement chapter that  
7                   provides for transparency, for clear due process and  
8                   for remedies in that event that that process is not  
9                   followed is extremely important. In terms of market  
10                  access commitments, we support coverage of as many  
11                  government entities as possible. We believe that  
12                  should include coverage of sub-federal entities just  
13                  as the WTO Government Procurement Agreement includes  
14                  coverage of sub-federal entities. We also believe  
15                  that the type of procurement offers made to each other  
16                  by the FTAA members should be comparable to that which  
17                  signatories to the WTO Government Procurement Code  
18                  have made.

19                 I might point out that we do see in the  
20                 area of transparency that it should apply to all  
21                 procurement without exception. The market access  
22                 rules would therefore be limited to those sectors in

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1 which specific offers are made.

2 In conclusion, to a large extent because  
3 of the drawn out and difficult process of obtaining  
4 approval of Trade Promotion Authority the constituency  
5 in favor of free trade in many Latin American  
6 countries is much smaller today than it was five years  
7 ago. We think that the United States has an  
8 opportunity to play a leadership role to demonstrate  
9 that with the enactment of TPA that the United States  
10 is committed to an open, liberal trading environment  
11 in the hemisphere. We believe that the  
12 recommendations that we have made here today will be  
13 helpful in demonstrating that leadership. Thank you  
14 very much.

15 CHAIRPERSON SURO-BREDIE: Thank you, Mr.  
16 Richards. We have questions by Bennett Harman and  
17 then Kimberly Claman and other panel members. We'll  
18 start with you, Bennett.

19 MR. HARMAN: Thank you. Good morning,  
20 Tim. A few quick questions. A number of the points  
21 that you have made sound very consistent with  
22 positions that we've taken for example in pursuing

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1 zero-for-zero in the immediate elimination basket on  
2 a sectoral basis, separating the clearance of goods  
3 from the administrative formalities and also  
4 articulating a vision that at the end of the day after  
5 some transition period we would have a single set of  
6 origin rules applying to intra-hemisphere preferential  
7 trade. My question is are these areas in which the  
8 NAM has begun to and/or has plans to help through  
9 private sector contacts build support for these types  
10 of positions in the negotiations.

11 MR. RICHARDS: Absolutely. Let me just  
12 take those one at a time. Generally actually we have  
13 of course submitted comments to the Americas Business  
14 Forum that not surprisingly are very similar to the  
15 testimony that we have given here today. So we are  
16 formally presenting that. We have participated in  
17 every Americas Business Forum. We have worked closely  
18 with all of the other participants to advance an  
19 agenda that includes these very points although I must  
20 say that more so on the first two, the tariff  
21 elimination and the clearance.

22 The rules of origin is an issue that

1 really we've put more emphasis on in about the last  
2 eight months as it's become clearly more of an issue  
3 to be addressed. In addition many of the members of  
4 NAM including member associations who are part of the  
5 NAM have begun to go to their counterpart associations  
6 around the hemisphere and are requesting their support  
7 for this agenda. So yes, we are actively pursuing  
8 that.

9 MR. HARMAN: Thank you. You made a  
10 constructive suggestion that at the stage at which the  
11 agreement negotiated that we engage in outreach with  
12 respect to the rules of origin and how particularly  
13 small or medium companies can take advantage of that  
14 and understand the new system. We recall that there  
15 is something similar done after the NAFTA was  
16 negotiated. The question is whether we could work  
17 with the NAM to help in that effort, the outreach.

18 MR. RICHARDS: Absolutely, the NAM would  
19 be very pleased to have the opportunity to help to  
20 bring you in touch with small and medium enterprises  
21 around the country and to put together programs for  
22 you to have that outreach program because you are

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1 right. Rules of origin are often the most complicated  
2 single element of these agreements for people to  
3 implement and the ability to insure that proper  
4 procedures have been followed to gain access to the  
5 markets and to have the proper origin is extremely  
6 important.

7 MR. HARMAN: Third and last question from  
8 me on behalf of our --

9 CHAIRPERSON SURO-BREDIE: Could I just ask  
10 a follow-up question on the rules of origin? NAM  
11 obviously has a number of people already manufacturing  
12 in the hemisphere. Do you have any sense for example  
13 at General Electric how many different forms of rules  
14 of origin you are now manufacturing under in the  
15 hemisphere? This is fairly large exercise I would  
16 imagine to come to a unified rule.

17 MR. RICHARDS: It is a large exercise.  
18 Just as an example, GE probably manufactures  
19 substantially in about six countries of the hemisphere  
20 which includes in all three NAFTA countries of course,  
21 in MERCOSUR and in the Andean region. If you think  
22 about Mexico's relationships the number of bilateral

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1 agreements that Mexico has negotiated, and the volume  
2 of trade isn't very high, that alone is a lot of  
3 complexity. Now Mexico and MERCOSUR have reached an  
4 agreement, not that it covers that much trade but  
5 there is an agreement there.

6 It's extremely complicated. I can't give  
7 you a precise number but we did create a couple of  
8 years ago slide that just tried to show on one page  
9 all of the different interlinking trade agreements  
10 that exist within the Americas and it's an extremely  
11 complicated picture. The reality matches the visual  
12 image of the complication.

13 CHAIRPERSON SURO-BREDIE: I'm sorry to  
14 interrupt.

15 MR. HARMAN: Finally on behalf of our  
16 procurement negotiator, we've pursued covering federal  
17 and sub-federal and even municipal entities in the  
18 government procurement negotiation but we have run  
19 into some strong reluctance on the part of our trading  
20 partners particularly with the respect to sub-federal  
21 procurement coverage. Given this dynamic, does the  
22 NAM believe that we should continue to pursue

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1 additional states and cities in an effort to augment  
2 our market access offer? If so, would the NAM help  
3 support such outreach to additional cities and states  
4 in the United States in terms of our offer?

5 MR. RICHARDS: Yes, we do think that it  
6 would be helpful although frankly since the U.S. as a  
7 member of the Government Procurement Agreement has  
8 already gone much further than many of the other  
9 countries in the hemisphere. I think that the U.S.  
10 has a substantial offer that is available to it  
11 currently.

12 I would really say that we want the  
13 broadest possible degree of coverage that can be  
14 achieved and are willing to work with you to do  
15 whatever we can to help provide the support  
16 domestically to achieve that. If signing on  
17 additional states and additional cities is important  
18 to achieving that, we will be there to work with you  
19 to help to achieve that. But I think there is no need  
20 to wait to try to get others to sign on because  
21 there's a lot available to the U.S. Government right  
22 now.

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1 MS. CLAMAN: Thank you. Good morning,  
2 Tim. We see that NAM supports preestablishment as  
3 does the USG. Another important element in the  
4 investment chapter is how to address investment to  
5 supply services. Some FTA delegations believe that  
6 liberalization in investment for services should be  
7 addressed in the services chapter rather than in the  
8 investment chapter. Thus the certain protections for  
9 investment would not exist for services as it does in  
10 NAFTA. We were wanting to find out what's NAM's view  
11 on that issue as to where that investment to supply  
12 services should be captured in an FTA agreement.

13 MR. RICHARDS: NAM has not taken a  
14 position on that. It's not an issue that has yet come  
15 up within our deliberations so I can just give you a  
16 personal view if you would like that.

17 From the perspective of a company making  
18 an investment, frequently there are manufacturing  
19 elements and services elements associated with the  
20 same investment. I would hope that in the course of  
21 developing these disciplines that you wouldn't have  
22 one set of rules that are going to apply to your

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1 manufacturing investments and then in the same  
2 facility you have a group of people providing let's  
3 say engineering services and they have a different set  
4 of rules that apply to that portion of the investment.  
5 It's really not tenable. So I think that it is  
6 important to have a common level of investment  
7 disciplines and whether means that it has to all be in  
8 the investment chapter, I don't know. I leave that to  
9 you.

10 CHAIRPERSON SURO-BREDIE: As there are no  
11 further questions, we thank you, Mr. Richards. The  
12 next witness is John Murphy, Vice President, Western  
13 Hemisphere Affairs, U.S. Chamber of Commerce.

14 MR. MURPHY: Good morning and thank you.  
15 Good morning, it's a pleasure to be here. I'm pleased  
16 to appear before this committee on behalf of the U.S.  
17 Chamber of Commerce with over three million members.  
18 The U.S. Chamber is the world's largest business  
19 federation. I'm also pleased to represent the  
20 Association of American Chambers of Commerce in Latin  
21 America. AACCLA is a leading advocate of increased  
22 trade and investment between the United States and

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1 Latin America with over 20,000 member companies. It  
2 represents over 80 percent of all U.S. investment in  
3 Latin America.

4           Given the brief time allotted, let me  
5 summarize the principle objectives of these two  
6 organizations in the FTAA negotiations by running  
7 through some of the negotiating groups and then adding  
8 one general comment. With respect to the negotiating  
9 group on market access, we feel the FTAA negotiations  
10 should strive ambitiously for the earliest possible  
11 removal of all tariffs, quotas, and other barriers to  
12 trade. Each FTAA country should eliminate a high  
13 proportion of its tariffs within five years. Toward  
14 this end, the negotiators should pursue such  
15 strategies as the immediate removal of low tariffs,  
16 the adoption of ceiling rates from which progressive  
17 reductions can be made and the establishment of  
18 sectoral arrangements where appropriate.

19           In the critically important agriculture  
20 negotiating group, the FTAA countries should eliminate  
21 the use of agricultural export subsidies as defined in  
22 the WTO Agreement on Agriculture and ban the

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1 importation of agricultural goods receiving such  
2 subsidies from outside of the region. In the services  
3 negotiating group, the FTAA should bring about the  
4 maximum liberalization of trade in all modes of  
5 supply, including cross-border supply of services and  
6 movement of people, across the widest possible range  
7 of services, as set out in greater detail by our  
8 colleagues with the Coalition of Services Industries.

9 The FTAA should also provide rights of  
10 establishment with majority ownership and national  
11 treatment for service-providing companies operating in  
12 foreign markets. In services and in other areas, the  
13 FTAA should promote transparency of regulatory  
14 processes, including rulemaking, licensing, setting  
15 standards and judicial and arbitral proceedings.

16 On intellectual property, the FTAA  
17 countries should strengthen IP rights protection  
18 throughout the hemisphere including through  
19 implementation and enforcement of the WTO's TRIPS  
20 Agreement and supporting measures to reduce piracy and  
21 counterfeiting. The FTAA agreement should require  
22 signatory countries to become parties to the World

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1 Intellectual Property Organization Copyrights Treaty  
2 as well as the Performances and Phonograms Treaty.  
3 The FTAA countries should take the necessary steps to  
4 adhere to and implement existing multilateral  
5 agreements, including the Conventions named after the  
6 cities where they were signed, Brussels, Berne, Paris,  
7 the Budapest Treaty, the Patent Cooperation Treaty,  
8 and others that are in our written comment.

9 With respect to competition policy, rules  
10 on official monopolies and state enterprises should be  
11 included in the text of the FTAA Agreement and should  
12 ensure that when the state participates in commercial  
13 activities, its FTAA trading partners are not subject  
14 to discrimination. In its chapter on investment, I  
15 would like to reiterate some points made in the  
16 previous presentation. The FTAA should afford  
17 investors from an FTAA country when they seek to  
18 initiate investment into the territory of another FTAA  
19 country and throughout the life of that investment,  
20 the better of national treatment or most favored  
21 nation treatment when the investors are in like  
22 circumstances. The FTAA Agreement should endorse

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1 classic expropriation disciplines. It should also  
2 provide mechanisms for the resolution of investor-  
3 state disputes as included in dozens of bilateral  
4 investment treaties and in free trade agreements such  
5 as the NAFTA.

6 On government procurement, the FTAA should  
7 include rules to ensure non-discriminatory treatment  
8 for suppliers of goods and services from any FTAA  
9 country bidding on government procurement contracts in  
10 any other country. It should make transparency a  
11 central principle of all government procurement  
12 regimes.

13 In concluding, I would like to add a  
14 general comment. Passage just over a month ago of the  
15 Trade Act of 2002 affords us a tremendous opportunity.  
16 Winning Congressional approval of Trade Promotion  
17 Authority took a great deal of work, with many  
18 advocates of business and consumers as well as  
19 advocates of a truly progressive foreign policy doing  
20 yeoman's work to win the argument. TPA is law today  
21 because we succeeded in making the case that trade is  
22 a tremendous boon to the economic well-being of this

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1 nation, and potentially at least, every nation around  
2 the world.

3 Now we must put this legislation to work  
4 and we must use TPA to pursue great and ambitious  
5 goals such as the FTAA. On behalf of the U.S. Chamber  
6 and AACCLA, I urge the Administration to be ambitious  
7 as you contemplate the goal of hemispheric free trade.  
8 These are hard times for Latin America and there is  
9 nothing better that this nation can do to lend a hand  
10 to the other members of what President Bush has called  
11 our "hemispheric familia" than to make the FTAA a  
12 reality. It's in the U.S. national interest. It is  
13 in the interest of the peoples of Latin America and  
14 the Caribbean. Thank you very much. I will be happy  
15 to try to answer any questions.

16 CHAIRPERSON SURO-BREDIE: Thank you very  
17 much, Mr. Murphy. Let's see. You have a question  
18 from the Investment Office.

19 MS. CLAMAN: Thank you. My first question  
20 is on behalf of my colleague who is at the Services  
21 negotiations in Panama this week. In your written  
22 testimony, regarding your ambitions for services

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1 rights of establishment, are you interested solely in  
2 majority ownership or also in 100 percent foreign  
3 owned subsidiaries?

4 MR. MURPHY: I think I would have to go  
5 back and review our longer comment that actually has  
6 not been submitted yet. We have some late breaking  
7 items that we are trying to add to that. Rather than  
8 say something that might be off I would rather hold  
9 off on that.

10 MS. CLAMAN: Thank you. On investment, we  
11 noted that they've endorsed classic expropriation  
12 disciplines and we are wondering how you see the TPA  
13 legislation investment objectives impacting these  
14 classic expropriation disciplines.

15 MR. MURPHY: We don't see any particular  
16 conflict in this area. I think that on investment  
17 across the board, our view of the TPA legislation is  
18 that it has really reinforced long-standing  
19 traditions. As I mentioned at one point in the  
20 comments, there has of course been some small  
21 controversy in the past year or two about some of the  
22 arbitration mechanisms that are included in NAFTA

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1 Chapter 11 and in our BITS.

2 But I think that what we saw on Capitol  
3 Hill I would hasten to emphasize is that in the end  
4 this was the lion that didn't roar. In fact, I think  
5 the business community did a good job of emphasizing  
6 how valuable these long-standing mechanisms are to  
7 U.S. business interests. For that reason it was  
8 perhaps less controversial in debate than might have  
9 been expected.

10 CHAIRPERSON SURO-BREDIE: We have an  
11 additional question by Juliet Bender of the Commerce  
12 Department.

13 MS. BENDER: In your testimony, you  
14 mention particularly in the market access area that  
15 you are looking to have the elimination of all  
16 barriers as soon as possible. I was wondering if  
17 there in the non-tariff barrier area if your members  
18 have focused on particular priority areas in that area  
19 in non-tariff barriers that you could elaborate on  
20 here or provide us additional information, particular  
21 barriers or particular countries.

22 MR. MURPHY: I think that in the current

1 environment one thing that we are hearing a great deal  
2 of from the business community has to do with  
3 improvements in some of the issues that have been  
4 dealt with in the area of business facilitation, some  
5 of the customs' initiatives that are under way  
6 especially since 9-11. The United States has entered  
7 into a number of smart border accords and initiated  
8 programs such as CTPAT and the container security  
9 initiative all of which have the recurring theme that  
10 the United States needs to find ways to employ new  
11 technologies and modern risk management techniques in  
12 order to identify safe shipments as safe so that we  
13 don't waste resources searching those shipments and  
14 that we can focus our resources on other shipments  
15 that are perhaps more difficult.

16 Now this is a very non-traditional answer  
17 to your question. These are certainly non-traditional  
18 barriers to trade but certainly for the business  
19 community, we are hearing a great deal of emphasis on  
20 this particular area. The real mechanics of how trade  
21 takes place is increasingly important.

22 MR. HARMAN: One quick question. You

1 reference in the tariff area is support for the  
2 establishment of sectoral arrangements where  
3 appropriate. In your more detailed submission, will  
4 you expand a little bit on that and also would you be  
5 aware of support among the Latin American countries  
6 for sectoral arrangements within the tariff  
7 negotiation?

8 MR. MURPHY: I think that we will expand  
9 upon that a bit in our written statement. This is one  
10 area for instance where some of the sectors that have  
11 been discussed in the APEC context might be  
12 interesting to replicate in the FTAA.

13 CHAIRPERSON SURO-BREDIE: If there are no  
14 further questions, we thank you, Mr. Murphy. The next  
15 witness is Lee Sandler, General Counsel of the  
16 American Free Trade Association. The panel will be  
17 joined by Kira Alvarez of our Intellectual Property  
18 Office.

19 MR. SANDLER: Thank you very much. I very  
20 much appreciate the opportunity on behalf of our  
21 Association to testify and we appreciate your holding  
22 these hearings. Our association has not appeared

1 before USTR before although we have filed written  
2 comments on other agreements.

3 The American Free Trade Association for  
4 more than 20 years has worked on parallel market  
5 issues in trying to preserve federal law in the United  
6 States which fosters that type of competitive  
7 competition in the United States. Our members are  
8 distributors, wholesalers, retailers and importers  
9 primarily of fragrance products, health and beauty  
10 aids. They deal in the legal but the unauthorized  
11 distribution system which has been referred to as a  
12 parallel market by those who favor it and referred to  
13 it more pejoratively as a gray market by those who  
14 would prefer not to have its competition.

15 Our members in this Association strongly  
16 support full and aggressive enforcement of  
17 intellectual property laws throughout the hemisphere.  
18 We support the TRIPS Agreement and its endorsement by  
19 all the trading partners in this hemisphere. We join  
20 with all those who are concerned about trade in  
21 counterfeit and piratical goods and would like full  
22 enforcement against those goods. However we also

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1 support the continuation of parallel market trade  
2 consistent with existing United States law.

3 We believe strongly that there needs to be  
4 a limit to the right to control distribution  
5 downstream, the right to control pricing. We think  
6 that there's a need for the countries of this  
7 hemisphere to be able to fully participate in the  
8 global economy in a competitive fashion. The way  
9 those distribution rights have been limited  
10 historically has been referred to as a first-sale  
11 doctrine that once goods are sold that the downstream  
12 distribution cannot be controlled by the trademark  
13 copyright owner or the patent owner.

14 In the parlance of the international  
15 agreements and international law, we refer to  
16 exhaustion rights and make choices between national,  
17 regional and international exhaustion. At the  
18 national exhaustion level, we run the risk of  
19 separating each country, dividing up the markets and  
20 limiting the competition. At the international arena,  
21 we join fully into a competitive environment with all  
22 of our trading partners.

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1           We urge the adoption of an international  
2 exhaustion philosophy. We strongly oppose an adoption  
3 of a national exhaustion policy. I'm not an expert in  
4 reading bracketed language in the text of agreements.  
5 I struggled through that so I can't say that I fully  
6 understand what's proposed on the table here but I do  
7 know what happened in the Jordan Agreement. That  
8 clearly was a national exhaustion policy which we  
9 would oppose.

10           We know that the five agreements that were  
11 referred to by the Supreme Court in Quality-King case  
12 were international agreements which adopted a national  
13 exhaustion policy which was inconsistent with our law  
14 and we think inconsistent with our competitive needs.

15           Why do we favor an international  
16 exhaustion? It fosters wider distribution of  
17 products. It preserves the existing distribution  
18 schemes in this country on the competitive needs. It  
19 fosters price competitiveness for products throughout  
20 this country and throughout the hemisphere. It  
21 permits the countries of this hemisphere to fully  
22 participate in the global economy. It makes products

1       available at prices and places they would not be  
2       otherwise available. It particularly benefits low  
3       income and fixed income consumers.

4               The owners are protected and compensated  
5       by the first-sale so there is no economic damage to  
6       those because the copyright owners and intellectual  
7       property owners are able to control the pricing and  
8       sale of their products. There are also opportunities  
9       where appropriate for restrictions. The international  
10      exhaustion does not mean that there is no limit to the  
11      ability to control or restrict imports. Where  
12      unrelated owners of intellectual property in a country  
13      of importation exist, they can exclude competing  
14      imports. Where there materially different products  
15      which are distributed in a country, they can exclude  
16      those. There's an ability by contract to restrict  
17      sales as well provided they are consistent with anti-  
18      trust laws.

19             Health and safety issues have been raised  
20      from time to time as a problem about parallel market  
21      trade. The parallel market goods are genuine goods,  
22      manufactured in the same places as those that are

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1 distributed in authorized distribution channels. They  
2 are subject to the same exact rules and regulations  
3 which control those that are distributed otherwise.

4 We believe very strongly that this  
5 agreement should not be used to fragment, segment the  
6 markets in this hemisphere. That free trade should be  
7 the freeing up from trade restrictions and not the  
8 privatization of trade restrictions under the guise of  
9 intellectual property laws. We encourage a full  
10 debate on issues that might be generated with respect  
11 to the virtues of parallel market trade and its impact  
12 and its costs. We think that in the century of a  
13 parallel market trade to be seen this country, we can  
14 see its virtues and we would strongly support your  
15 adopting an international exhaustion policy of the  
16 FTAA. I'll be happy to answer any questions. Again  
17 we appreciate very much having an opportunity to  
18 discuss these issues with you.

19 CHAIRPERSON SURO-BREDIE: Thank you, Mr.  
20 Sandler. The first question will be posed by Kira  
21 Alvarez of USTR and we also have questions from the  
22 Department of Treasury.



1 MS. ALVAREZ: Thank you, Mr. Sandler. We  
2 appreciate your testimony. I have some factual  
3 questions. In general, how much, would you say, of a  
4 discount are your goods sold at from a manufacturer's  
5 suggested retail price?

6 MR. SANDLER: I don't have hard verifiable  
7 information on that. There are times when the prices  
8 are equal in the authorized distribution chain as they  
9 are in the discount chain. Twenty percent discounts  
10 are certainly very common. But I can't give you an  
11 economic study that would suggest that we have made  
12 informal polls from time to time from our members.

13 MS. ALVAREZ: This is a follow-up to that.  
14 How would a policy of international exhaustion affect  
15 prices in less developed countries and lower income  
16 countries?

17 MR. SANDLER: That's a choice that would  
18 be strictly made by the original seller. The prices  
19 do not have to be affected at all. The issue is an  
20 issue of control. If products are sold at a severe  
21 discount in large quantities, much larger than a  
22 market can absorb, those will find their way into the

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1 other channels of distribution where there's a control  
2 on the quantity as well as on the price. The prices  
3 can remain as they are today if a company makes the  
4 choice of selling at a lower price in one market than  
5 it does in another.

6 MS. ALVAREZ: And then my last question  
7 concerns an issue you raised. That's what do you  
8 think are the general health and safety concerns with  
9 unrestricted parallel imports of pharmaceuticals and  
10 particularly with respect to *vis a vis* the authorized  
11 goods but also the respecting counterfeits? Do you  
12 see a policy of international exhaustion impacting  
13 that?

14 MR. SANDLER: First off, with respect to  
15 health and safety measures as I testified, the goods  
16 which cross the borders are subject to all of the same  
17 phytosanitary health and safety measures which would  
18 apply to goods which are imported by an authorized  
19 importer. I do not see a risk there that is any  
20 different than would be a risk with it coming in a  
21 different channel. The health and safety laws are  
22 there and can be complied with.

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1                   Your other question had to do with?

2                   MS. ALVAREZ: I guess how do you see the  
3 enforcement of the health and safety regulations with  
4 respect to those counterfeit goods if there is an  
5 unrestricted trade in parallel imports?

6                   MR. SANDLER: The impact on it, the  
7 Australian government did a study on this fairly  
8 recently and determined that there was no significant  
9 impact whatsoever on their enforcement against the  
10 counterfeit goods. These are strictly different  
11 channels of communication. I know that members of our  
12 association where there have been suspicious goods  
13 offered to them have been very quick to go to the  
14 government to make them aware of those opportunities  
15 and they have absolutely no interest in being involved  
16 with counterfeit goods or pirated goods and are allies  
17 in that war.

18                  MR. WORTH: Related to your last answer on  
19 the legitimacy of parallel goods, you note in your  
20 testimony that they are genuine articles in contrast  
21 to pirated or counterfeit goods. This raises a  
22 question of U.S. customs enforcement role. Some

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1 people believe that restricting parallel imports will  
2 facilitate enforcement against pirated and counterfeit  
3 goods. Others believe it will draw resources away  
4 from enforcement. Do you have a view on this?

5 MR. SANDLER: Again I would refer to the  
6 Australian study where they came to the conclusion  
7 that there was no drain on those resources. As I  
8 mentioned before, I know that we have been allies in  
9 those issues in identifying situations where goods are  
10 counterfeit. The issue with counterfeit goods is a  
11 question of smuggling and misdocumentation of those  
12 goods.

13 Wherever there is an opportunity and an  
14 interest in introducing counterfeit goods they will  
15 find a way to do that. Parallel market does not  
16 create any greater or lesser opportunity than any  
17 other forms of smuggling. So I do not see that the  
18 elimination of it is going to be of any benefit  
19 whatsoever to the anti-counterfeiting, anti-piracy  
20 mode.

21 MR. WORTH: My second question is in your  
22 written testimony you urged the FTA to encourage its

1 members to adopt domestic policies favoring  
2 international exhaustion of intellectual property  
3 rights if it must participate in the exhaustion debate  
4 at all. Does the phrase "if it must participate in  
5 the exhaustion debate at all" mean that having FTA  
6 remain silent on exhaustion would be acceptable for  
7 the businesses you represent?

8 MR. SANDLER: It would certainly be  
9 acceptable as opposed to a national or regional  
10 exhaustion policy. We prefer international but after  
11 that, yes, the silence is the posture of the TRIPS  
12 agreement and we would support that as the alternative  
13 for the FTA.

14 CHAIRPERSON SURO-BREDIE: Mr. Sandler, you  
15 made mention of an Australian study. I wonder if by  
16 chance you could forward that study to us.

17 MR. SANDLER: I'd be happy to.

18 CHAIRPERSON SURO-BREDIE: Would you by  
19 chance have it electronically?

20 MR. SANDLER: I probably do.

21 CHAIRPERSON SURO-BREDIE: If you could  
22 then, could you forward it electronically to

1 gblue@ustr.gov?

2 MR. SANDLER: I would be happy to do  
3 that.

4 CHAIRPERSON SURO-BREDIE: She will see  
5 that the rest of us get that.

6 MR. SANDLER: She would prefer not to have  
7 the paper.

8 CHAIRPERSON SURO-BREDIE: It's very  
9 difficult for us to take paper unless you have it with  
10 you today. Thank you. If it's an extensive study,  
11 faxing it would probably be laborious. If there are  
12 no more questions, then thank you very much. The next  
13 witness is Walter B. McCormick, Jr., President and CEO  
14 of United States Telecom Association. The panel will  
15 be joined by Jonathan McHale, the Deputy Assistant  
16 U.S. Trade Representative for Telecom in the Industry  
17 Office. Welcome, Mr. McCormick.

18 MR. MCCORMICK: Thank you, Madam  
19 Chairperson and members of the panel. I'm Walter  
20 McCormick. I'm the President of the U.S. Telecom  
21 Association. We are the nation's largest  
22 telecommunication trade association representing local

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1 exchange carriers and companies that engage in the  
2 provision of long distance service, competitive local  
3 exchange service, wireless service and Internet  
4 service. I will summarize my remarks briefly but I  
5 would ask, Madam Chairman, that a copy of my full  
6 statement be incorporated in the record of the  
7 proceeding.

8 I want to talk to you today about the  
9 economy. The telecommunication sector of our economy  
10 is in a tailspin. Two weeks ago, USA Today listed  
11 telecommunications as a sector of the economy that is  
12 in critical condition. The policies that have put  
13 telecommunications in critical condition are the  
14 policies that USTR wants to export to America's  
15 trading partners. Don't do it.

16 The policies that you are promoting are  
17 deflationary. They stifle investment. They lead to  
18 massive job loss. The record in our country over the  
19 last two years, job loss in the telecommunications and  
20 information technology sector of our economy, 600,000  
21 jobs lost. Two trillion dollars in market  
22 capitalization gone. These are policies that include

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1 those that have been invalidated by our courts. So  
2 the irony is that USTR wants ours to adopt as the law  
3 of the land what is no longer the law in our own.

4 These are policies that are being  
5 revisited by our Federal regulatory agency, the  
6 Federal Communications Commission. They are under  
7 review in the United States Congress. The House of  
8 Representatives recently voted to change America's  
9 regulatory approach and the Senate similarly has  
10 legislation under consideration.

11 Trade agreements should promote broad  
12 regulatory reform principles, such as those that were  
13 established in the reference paper of the World Trade  
14 Organization Agreement on basic telecommunications,  
15 principles such as transparency, non-discrimination,  
16 the establishment of an independent regulatory  
17 authority and fair allocation of scarce resources.  
18 But each signatory must be permitted to shape  
19 regulation in a manner that responds to specific  
20 market, economic and social needs, and that goes for  
21 the United States as well.

22 We should not be locked into a trade



1 agreement that advocates a regulatory approach that is  
2 deflationary, that has cost us jobs, that has stifled  
3 capital investment, that is under review by our own  
4 regulatory agencies in Congress and has been  
5 invalidated by our courts.

6 Madam Chairperson and members of the  
7 panel, at USTA we support the Administration's  
8 approach of achieving increased trade through the Free  
9 Trade Agreement of the Americas. We urge you to  
10 encourage the coordination of fluency allocation to  
11 improve international roaming capabilities and to  
12 stimulate investment in 3G wireless services.

13 But most importantly today I am here to  
14 urge you to avoid the export of policies that are  
15 deflationary, that have been overturned by our courts,  
16 are under review by our legislators and regulators and  
17 that have hurt America's own economy. Thank you very  
18 much. I would be happy to respond to any questions  
19 that you might have.

20 CHAIRPERSON SURO-BREDIE: Thank you very  
21 much for your testimony, Mr. McCormick. I was  
22 particularly struck by your opening statement which

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1       seemed to indicate that you thought that trade  
2       policies had been responsible for massive job loss in  
3       the telecommunications industry. Can you substantiate  
4       that?

5                   MR. MCCORMICK: What I suggested was that  
6       regulatory policies such as mandatory unbundling,  
7       telluric pricing, those types of policies which are  
8       incorporated in this particular trade agreement as  
9       proposed are policies that are under review here in  
10      the United States because they have proven to be  
11      deflationary and are causing economic dislocation.  
12      Yet they are incorporated as part of the objectives in  
13      this particular series of negotiations. We think that  
14      they should not be. We think that USTR should go back  
15      to the approach that was basic telecommunications  
16      trade approaches as incorporated in the reference  
17      paper.

18                   CHAIRPERSON SURO-BREDIE: Thank you.

19                   MR. MCHALE: Thank you for your testimony.  
20      Are there areas of the reference seeing it being  
21      implemented over the past four years, five years, that  
22      you think could be strengthened that you would

1 recommend actually adding to it?

2 MR. MCCORMICK: I would be happy to  
3 provide some information for the record with regard to  
4 the reference paper but the reference paper takes the  
5 kind of approach that incorporates traditional  
6 concepts of trade negotiation and broad objectives.  
7 Like I said before, objectives such as transparency,  
8 fair allocation of scarce resources, the establishment  
9 of a truly independent federal regulatory agency in  
10 the countries of our trading partners, but avoid  
11 specific regulatory approaches. That's really what we  
12 want to is we want to return to those kinds of broad  
13 principles particularly at a time when the very  
14 regulatory policies, the specific regulatory policies,  
15 that have been incorporated in later documents are  
16 those that are under review here in the United States  
17 because they have been extraordinarily problematical  
18 for our economy.

19 MR. MCHALE: Not to press it, but you  
20 mentioned areas like transparency, would you be able  
21 to provide us with details on things like transparency  
22 or independent regulator that you think could be

1 strengthened building upon the regulator maybe at the  
2 level of principles to some degree but more specific  
3 than what the reference paper currently has?

4 MR. MCCORMICK: Well, I'll take a look at  
5 that and endeavor to do that but at the same time I  
6 sense a certain tension here between the desired USTR  
7 to be very detailed when it comes to  
8 telecommunications, lots of discreet objectives. We  
9 believe that the objectives should be somewhat  
10 broader.

11 So we'd like to see a return to the  
12 somewhat broader objectives as opposed to getting into  
13 the nitty-gritty of specific regulatory policies. To  
14 the extent if you are asking me to strengthen the  
15 reference paper in the area of transparency and in  
16 other areas by promulgating specific regulatory  
17 approaches, that's directly inconsistent to the  
18 objectives that we think should be at the floor.

19 MR. MCHALE: You mentioned areas where you  
20 think we could make additional progress in things like  
21 frequency coordination. Do you think it's appropriate  
22 for something like frequency coordination to be

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1 actually part of the text of the trade agreement? I  
2 don't think we've typically done that in the past.

3 MR. MCCORMICK: I think that when we are  
4 talking about trade agreements now and frequency  
5 coordination, we know of the close relationship that  
6 you have with Commerce and with State both of which  
7 are involved in the World Administrative Radio  
8 Conferences. Those conferences used to be held every  
9 ten years. They now seem to be an on-going  
10 constantly.

11 I think that the importance of frequency  
12 allocation and coordination just simply can't be  
13 overstated. It's just central to the development of  
14 global trade and global business, the interoperability  
15 of systems, the ability to be able to market and sell  
16 equipment. So, yes, I think it is appropriate at this  
17 point in time to begin looking at impressing upon  
18 countries the importance of frequency allocation as a  
19 matter of trade.

20 MR. MCHALE: Then finally, in Latin  
21 America in many countries there is a prohibition on  
22 resale as a facilities based preference in many of the

1 regimes down there. Does your organization advocate  
2 opening up resale, not pricing it at a particular  
3 level but having the ability to offer services on a  
4 resale basis or no?

5 MR. MCCORMICK: We don't as an  
6 organization have a specific policy for or against  
7 resale. It is in every market that has involved  
8 transport be it railroad, trucking, airline,  
9 telecommunications. There has developed effective  
10 wholesale markets. I think that what we are troubled  
11 by are the highly discreet and specific requirements  
12 related to the way in which wholesale markets develop.  
13 We think that it's wholly unnecessary to lay those  
14 out.

15 In a free market system, there develops  
16 naturally a wholesale market. The basic principles  
17 that are incorporated in the reference paper are aimed  
18 to develop that sort of open free market without  
19 getting into details about resale specifically or the  
20 various elements that could constitute a particular  
21 approach to resale as are incorporated in the  
22 unbundling of pricing requirements that are in the

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1 current document.

2 MR. MCHALE: Not to belabor this but many  
3 of the countries prohibit resale. The question is  
4 ought we in a broad based hemisphere wide trade  
5 agreement try and push to eliminate such provisions?

6 MR. MCCORMICK: I think that we would  
7 rather see you stick to the general basic principles  
8 and allow each country to be able to evolve its  
9 markets consistent with that particular market and  
10 need at that particular time. What needs to be done  
11 particularly in some countries is to encourage  
12 investment, facilities based investment. If that is  
13 the principal goal of a country to encourage  
14 facilities based investment, the issue is is that  
15 facilities based investment being done in a way which  
16 is consistent with fair and free trade or not.

17 CHAIRPERSON SURO-BREDIE: Thank you very  
18 much, Mr. McCormick. The panel has been joined by  
19 Bill Clatanoff, the Assistant USTR for Labor. The  
20 next witness is Jo Marie Griesgraber, Director of  
21 Policy for Oxfam America.

22 MS. GRIESGRABER: Thank you very much.

1 It's an honor for me to be here today to testify  
2 before the Trade Policy Staff Committee on this  
3 important issue of the Free Trade Area of the  
4 Americas. Oxfam America is a development agency  
5 founded in the United States in 1970. We are based in  
6 Boston. We accept no governmental or  
7 intergovernmental funding. Oxfam is a member of  
8 international confederation of Oxfams. There are 12  
9 Oxfams internationally. We operate in 120 overseas  
10 developing countries. We have field offices in 60 of  
11 these countries. We work with some 4,000 partners.  
12 These are what we call our grantees in the developing  
13 countries.

14 On April 11 of this year, we launched a  
15 Trade Campaign. I would be happy to make available to  
16 the members of the committee copies of the trade  
17 report and its summary. The Trade Campaign aims to  
18 change the rigged rules and double standards that  
19 govern today's world trade. We propose to make trade  
20 fair for everyone, including ordinary citizens,  
21 especially poor people. In order for trade to  
22 service, one component of a comprehensive and

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1 sustainable development strategy, countries must be  
2 able to pursue policies that focus on protecting basic  
3 civil, political, social, economic and cultural  
4 rights. Oxfam America believes that appropriate  
5 economic integration must prioritize basic sustainable  
6 development and poverty reduction needs.

7 Under the current arrangements, the FTAA  
8 represents another example of trade and investment  
9 rules that seek to maximize corporate gain, while  
10 leaving citizens outside of the negotiating rooms. We  
11 appreciate the opportunity to testify today at this  
12 public hearing. It's a venue to express opinions.  
13 However we believe that it is neither adequate nor  
14 representative of the entire negotiating process so  
15 far. For this reason, Oxfam America is opposing the  
16 FTAA.

17 If trade is truly to be made to work for  
18 equitable development and poverty reduction in the  
19 Americas, trade rules must include investment that  
20 protects not threatens internationally recognized  
21 worker rights, human rights and environmental  
22 protections. There exists several Civil Society

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1 proposals for hemispheric integration such as  
2 Hemispheric Social Alliance. In addition, this is  
3 hemisphere wide proposal. In addition, there are  
4 regional proposals that seek greater protection for  
5 the environment, workers and small farmers including  
6 a proposal that is put forth for example by FUNDE, one  
7 of Oxfam America's partners that is headquartered in  
8 San Salvador. Many Oxfam partners and allies  
9 throughout the hemisphere are participating I the  
10 development of proposals. Oxfam America and the other  
11 Oxfam affiliates are supporting these local actors  
12 both through capacity training and through funding and  
13 the development and proposals of their own regionally  
14 appropriate alternatives.

15 As I said, the principle reason that Oxfam  
16 America opposes the FTAA is the lack of transparency  
17 and Civil Society participation in the negotiating  
18 process. The FTAA proposes to integrate the largest  
19 trading block in the world, affecting the livelihoods  
20 of some 800 million people in North, Central and South  
21 America and the Caribbean. Yet the negotiations are  
22 being conducted virtually in secret. According to

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1 FUNDE, the feedback that has been solicited by the  
2 Committee of Government Representatives on the  
3 Participation of Civil Society is supposed to be  
4 circulated to the trade negotiating teams of all FTAA  
5 countries. However, there is no specific commitment  
6 to take these comments into account, much less to  
7 incorporate them into the working text of the  
8 agreement.

9 Civil Society organizations that  
10 participate in submitting comments to the Committee  
11 expect a genuine consultation and follow-up to occur.  
12 A firm commitment to openness and transparency guided  
13 by the negotiators' good-faith outreach to relevant  
14 stakeholders is necessary if the public is to be  
15 expected to support the negotiations process.

16 At this point I would like to call your  
17 attention to an attachment to the testimony. It's not  
18 in the preceding. It's an appendix. It's a press  
19 release that we recently received from a network of  
20 organizations in Central America called CID. This  
21 particular press release is from the El Salvador  
22 Chapter of the Meso American Initiative on Trade,

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1 Integration and Development.

2 The press release details concerns  
3 regarding the path, the process is currently taking  
4 and provides alternative proposals. While the  
5 specifics in the press release apply to the Central  
6 America Free Trade Agreement, Oxfam America regards  
7 CAFTA as one of the building blocks for the FTAA. So  
8 the process for CAFTA we envision as similar to what's  
9 appropriate for CAFTA should be appropriate for the  
10 FTAA.

11 The press release details concerns  
12 regarding the path the process is taking and provides  
13 alternative proposals. We strongly request that you  
14 study the statement carefully and encourage even  
15 insist with your counterparts throughout the Americas  
16 that all trade agreements must be negotiated in a  
17 transparent and participatory manner. Otherwise the  
18 treaties and the governments that negotiate them  
19 jeopardize their own legitimacy.

20 Oxfam is also extremely concerned that no  
21 regional trade agreement exceed WTO rules. The FTAA  
22 proposes to establish a set of supernational WTO plus

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1 rules in key development policy areas including  
2 agricultural, market access, government procurement,  
3 investment, services and intellectual properties.  
4 Particularly we have in mind life-saving medicines  
5 that impact the whole range of basic human rights.  
6 These rules would restrict the ability and sovereignty  
7 of governments to adapt national policies to achieve  
8 sustainable development and poverty reduction. As  
9 such they are unacceptable.

10 With regard to investment, Oxfam America  
11 opposes any trade agreement that places greater  
12 importance on the so-called corporate rights over  
13 fundamental human rights. Lessons should be drawn  
14 from the experience of NAFTA and particular its  
15 Chapter 11 provisions on investment. Chapter 11 has  
16 set new and pernicious precedent for international  
17 investment negotiations and has allowed foreign  
18 companies to sue governments, state and national, over  
19 environmental protections they regard as "tantamount  
20 to expropriation" of assets. This inflicts severe  
21 damage on the sovereignty of governments to protect  
22 the environment as well as internationally recognized

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1 human rights.

2 As a development organization with  
3 significant experience working with rural farmers in  
4 poor countries, Oxfam America knows that sound  
5 agricultural policies are critical to ensuring the  
6 human right to food security. The proposed FTAA rules  
7 must not impede the right and sovereignty of countries  
8 to develop and implement national agricultural  
9 policies that protect and promote food security, rural  
10 development and more equitable distribution of assets  
11 and sustainable use of natural resources.

12 Participatory countries must retain the  
13 flexibility to choose from the full range of policy  
14 options for achieving food security and sustainable  
15 models of agricultural production rather than being  
16 forced into adopting a single model of market  
17 liberalization. Oxfam America believes that a  
18 development or food security box should be part of any  
19 agreement on agricultural trade in the Americas. Good  
20 trade policy must be grounded in good development  
21 policy which must reflect the needs and priorities of  
22 the poor, especially the rural poor, the most

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1       marginalized.

2               In closing, Oxfam America believes that it  
3       is time for governments to bring the negotiations  
4       around the FTAA into the public domain so that Civil  
5       Society organizations can be sure that the concerns  
6       expressed will be seriously taken into consideration.  
7       Mechanisms for broad and meaningful Civil Society  
8       participation must be established if there is to be  
9       any chance of achieving a hemispheric model for  
10      economic integration that can act as a force for  
11      poverty reduction, sustainable economic growth and  
12      equitable distribution of wealth. Thank you for your  
13      time. I welcome your questions.

14              CHAIRPERSON SURO-BREDIE: Thank you very  
15      much for your testimony. I had a question related to  
16      the Trade Campaign and wondered whether or not and I  
17      haven't had a chance to study the documents. I think  
18      we would welcome having copies of it. Has Oxfam taken  
19      a position where they support any particular trade  
20      agreement either a regional agreement in the  
21      hemisphere already of which there are many or  
22      agreements elsewhere in the world that they think

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1 provide the adequate economic development basis?

2 MS. GRIESGRABER: We have not up to this  
3 point. This is a new campaign since April. It's an  
4 interesting question and will take it under  
5 consideration. If I find anything I will certainly  
6 forward it to you.

7 CHAIRPERSON SURO-BREDIE: Let's see. We  
8 have a question from Mr. Clatanoff.

9 MR. CLATANOFF: Good morning. Thank you.  
10 I have a couple of questions actually. Your testimony  
11 refers to the "Lessons Learned in NAFTA," especially  
12 Chapter 11, "Regarding Investments." In your view,  
13 have those lessons been adequately reflected in the  
14 recently enacted Trade Promotion Authority  
15 legislation?

16 MS. GRIESGRABER: No.

17 MR. CLATANOFF: Which way have they not  
18 been?

19 MS. GRIESGRABER: At this point, the  
20 Chapter 11 still retains the force of law. I think  
21 we've seen some erosion but we have not an adequate  
22 reversal. I think that when corporations are able to

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1 directly sue governments whether state or national.

2 This is inappropriate.

3 MR. CLATANOFF: All right.

4 CHAIRPERSON SURO-BREDIE: Is that what  
5 your sense in the United States is as well that  
6 corporations should not sue the national government?

7 MR. CLATANOFF: Under trade agreements, I  
8 don't think it's appropriate otherwise I mean it would  
9 for a national corporation to try to sue a government  
10 yes but not to allow those special rights through a  
11 trade agreement.

12 MR. CLATANOFF: My second question also  
13 has to do with the recently enacted Trade Promotion  
14 Authority. I notice your concern that global capital  
15 movements should not lead to what is commonly called  
16 the race to the bottom with respect to labor  
17 standards. In your opinion, are the worker rights  
18 clauses that have been included as principal  
19 negotiating objectives in the Trade Promotion Act  
20 sufficient to prevent this or would you like to see  
21 more or different worker rights clauses in the FTAA?

22 MS. GRIESGRABER: Two responses. One I

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1 think there's been very constructive progress. I  
2 particularly like the Trade Adjustment Authority. I  
3 think the money that's provided for worker adjustment  
4 in the United States is an excellent precedent.

5 With regard to the adequacy, that is  
6 something where we are in negotiations with our  
7 partners throughout the hemisphere as to the adequacy.

8 So we are currently in consultation with them. Oxfam  
9 America takes a position with regard to our own  
10 government but we want to leave adequate space for  
11 partners to have voice to their own concerns. So we  
12 are consulting with partners right now about the  
13 adequacy of those labor agreements.

14 MR. CLATANOFF: Okay, thank you.

15 CHAIRPERSON SURO-BREDIE: We have a  
16 question by the Department of Labor.

17 MS. VALDES: Thank you for being here.  
18 This is not a question. It's a request. In your  
19 testimony, you indicate the importance of the  
20 participation of the Civil Society in this  
21 negotiation. If there are any already being submitted  
22 through the Civil Society Committee, we would be very

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1 interested in getting any proposal in the areas of  
2 environment, workers and small farmers as you  
3 mentioned in your presentation. Thank you.

4 MS. GRIESGRABER: To whom should I send  
5 it? To the Chair?

6 CHAIRPERSON SURO-BREDIE: Yes, you can  
7 actually send it to the Executive Secretary of the  
8 TPSE. You can send it electronically to  
9 gblue@ustr.gov and we will circulate it. We have an  
10 additional question by Russell Smith of USTR.

11 MR. SMITH: Thank you for your testimony.  
12 I was intrigued by your comments on the participation  
13 of Civil Society and the failure of the negotiating  
14 process to take into consideration the views of Civil  
15 Society. I've actually served until recently as the  
16 head of the delegation for the U.S. to the Civil  
17 Society group. We've received and reviewed comments  
18 that are at times contradictory. They send us in  
19 different directions. I guess I would interested if  
20 you could expand a little bit more on how it is that  
21 you think the Civil Society Committee, the negotiating  
22 process can best take these views into account and can

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1 best let Civil Society know that in fact their points  
2 of view are being considered in the process.

3 MS. GRIESGRABER: Thank you for your  
4 question. To begin with in Central America  
5 particularly the participation is uneven at the  
6 national level. El Salvador apparently is  
7 particularly a great distance and Costa Rico  
8 particularly good. The press release you have has  
9 very specific recommendations that can take place on  
10 national level so you might look at that as a model.

11 With regard to the current arrangements,  
12 what we find is there is a listening and they receive  
13 the paper and then there is no response. There is no  
14 feedback. On the part of the United States and why  
15 Oxfam America was opposed to the Trade Promotion  
16 Authority was largely on similar grounds of democratic  
17 access.

18 Once the negotiations take place, we know  
19 that there are scores of experts available to the  
20 negotiating team, 99 percent from the corporate  
21 sector. Whereas the citizens of the United States or  
22 Civil Society groups do not have comparable access.

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1 So it's for this reason.

2 People say and you think Congress is so  
3 great. I say well Congress may not be so great but at  
4 least we can get through to them. Because their jobs  
5 depend on voters, we usually get a response. We may  
6 not like the response but we at least have access. So  
7 that's why we were pushing for consistent Senatorial  
8 participation in the trade negotiations. Whereas with  
9 the Trade Promotion Authority, we feel that the  
10 broader access of the public and Civil Society to the  
11 negotiations will be excluded whereas there will be  
12 special interests that will have special access.

13 MR. CLATANOFF: If I may just comment on  
14 that, you are aware of the Congressional Oversight  
15 Group that was created.

16 MS. GRIESGRABER: Yes.

17 MR. CLATANOFF: And there is I think quite  
18 extensive consultation period required for all trade  
19 agreements that are subject to Trade Promotion  
20 Authority. Ultimately of course no trade agreement  
21 enters in the force until it is approved by both the  
22 House and the Senate.

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1 MS. GRIESGRABER: We will be using the  
2 Congressional Oversight Committee or trying to use  
3 that point of access most assuredly.

4 CHAIRPERSON SURO-BREDIE: You can also  
5 contact us directly. Thank you very much. Do we have  
6 more questions? I think not. Thank you very much.  
7 Our last witness is Karen Hansen-Kuhn, Alliance for  
8 Responsible Trade/U.S. Gender and Trade Network.

9 MS. HANSEN-KUHN: The Alliance for  
10 Responsible Trade is the U.S. Chapter of the  
11 Hemispheric Social Alliance, a broad multi-sectoral  
12 network representing some 50 million people who work  
13 to promote equitable and sustainable trade and  
14 development in the Americas. Members of the HSA have  
15 been working for several months to analyze the draft  
16 FTA text and to identify particular areas of concern.  
17 Their analysis points to an agreement that could, if  
18 implemented, have profoundly negative impacts on  
19 peoples and environments throughout the hemisphere.

20 The members of ART and the HSA do not  
21 oppose trade or economic relations among our  
22 countries. We do believe, however, that the rules

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1 that govern those relations must be designed to ensure  
2 that both trade and investment serve, first and  
3 foremost, to promote equitable and sustainable  
4 development. The current draft FTAA text does not  
5 serve that goal and is already generating considerable  
6 opposition throughout the Americas.

7 The proposals contained in the draft FTAA  
8 text fail to address the issues that citizens' groups  
9 in the Americas have been raising for several years.  
10 We have developed a comprehensive set of proposals  
11 entitled Alternatives for the Americas, and here when  
12 I say "we" I mean the Hemispheric Social Alliance,  
13 which we have delivered on various occasions to USTR,  
14 the State Department and Congress. The Alternatives  
15 document lays out detailed proposals both on issues  
16 such as agriculture and investment that are subject to  
17 official negotiations and on issues such as gender,  
18 labor and environmental standards that must be  
19 addressed in an equitable agreement.

20 The draft text does not reflect any of  
21 those proposals. There is no mention in the text of  
22 the differential impact of trade on women or how the

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1 resulting problems might be addressed. There are no  
2 proposals to ensure that low wages, poor working  
3 conditions, and lax environmental enforcement do not  
4 serve as a country's primary "competitive advantage."  
5 The only statements on labor rights and environmental  
6 standards are weak and unenforceable suggestions that  
7 countries should strive not to lower those standards  
8 in order to attract foreign investment. There is not  
9 a single word within the reams of paper that make up  
10 the draft text on the provision of funds needed to  
11 raise standards internationally, as was done in the  
12 European Union, or on the cancellation of illegitimate  
13 foreign debts. Beyond those omissions, however, many  
14 provisions in the FTAA would serve to actively  
15 undermine any country's ability to achieve sustainable  
16 and equitable development. Today, I would like to  
17 focus on two of those issues which are investment and  
18 special treatment for developing countries.

19 We are disappointed that the FTAA proposals on  
20 investment include the controversial investor-state  
21 clause, which allow foreign investors to sue  
22 governments over public-interest laws that might

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1       undermine their profits. The proposed accord would  
2       prohibit performance requirements and capital  
3       controls, two important tools for governments to  
4       ensure that investment actually services to promote  
5       equitable and sustainable development.

6               We are also concerned at the lack of  
7       progress on issues related to special and differential  
8       treatment for smaller economies. Proposals on  
9       government procurement, for example, acknowledge the  
10      need for technical assistance and certain limited  
11      exceptions for developing countries. That language,  
12      as with similar text proposed in chapters on market  
13      access and services, is vague and hortatory,  
14      particularly compared to the specific binding rules on  
15      most-favored-nation, national treatment and other  
16      issues that negotiators clearly consider to be more  
17      important that the need to ensure that developing  
18      countries benefit from increased trade and  
19      development.

20             Each country should have the ability to  
21      determine democratically which sectors it is ready to  
22      open to foreign competition and which sectors are of

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1 strategic importance to the economy, as well as to  
2 modify their offers to liberalize particular sectors  
3 should conditions change. We would be happy to  
4 discuss our analysis of the draft text and our  
5 alternative proposals with you now or later. I also  
6 have some thoughts on the issue of participation as  
7 we've been engaged in the Civil Society Committee  
8 process since it was formed in 1998. Thank you.

9 CHAIRPERSON SURO-BREDIE: Thank you very  
10 much. We have a question from Kimberly Claman from  
11 USTR.

12 MS. CLAMAN: Thank you very much for your  
13 testimony. I'm in the Investment Office. The U.S.  
14 has not tabled text as of yet on the investor-state  
15 mechanism in the FTAA. The Trade Promotion Authority  
16 legislation supports inclusion of such a provision in  
17 FTA's negotiated by the Administration and therefore  
18 we will table text in the near future. I was  
19 wondering if your organization in light of that has  
20 begun to consider what kind of input you might provide  
21 to us to incorporate the TPA objectives with regard to  
22 investor-state or any of the other provisions such as

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1       expropriation that you might be concerned with.

2                   MS. HANSEN-KUHN:     I imagine a lot of  
3       people who have testified have raised some of the  
4       issues in general about investor-state.   I think our  
5       concern is that expropriation is defined very broadly.  
6       In fact my understanding is that the definition in  
7       NAFTA which I believe is the same as in FTAA defines  
8       expropriation more broadly than in domestic law in --  
9       countries.   So I think that would be one limitation.

10                   I think we also believe that companies  
11       should be required to exhaust national remedies before  
12       going to an international setting such as this and not  
13       bypass local traditional processes.   Our main concern  
14       is about very vague and broad definition of tantamount  
15       to expropriation or indirect expropriation.   In some  
16       of the cases that have come up recently it looks like  
17       companies are even trying to expand that definition a  
18       bit getting into issues of minimum standards or things  
19       that weren't perhaps intended when NAFTA was first  
20       developed.   Our concern is that it needs to be  
21       narrowed considerably.

22                   We do recognize the need for compensation

1 for expropriation. But this investor-state clause  
2 really looks more like a backdoor enactment of the  
3 whole regulatory taking scheme which really hasn't  
4 gone through in this country.

5 MS. CLAMAN: The one thing that I would  
6 notice is that expropriation text hasn't been agreed  
7 in the FTAA so when you see that text it has been  
8 submitted by different delegations. As I mentioned  
9 the U.S. has not submitted its text yet. We look  
10 forward to working with you on that.

11 MS. HANSEN-KUHN: I guess the issue for us  
12 of course is we are looking at the FTA text and there  
13 are brackets everywhere. There's no way to identify  
14 which country is making which proposal. So we can't  
15 tell which is the U.S. proposal and which is from  
16 Aruba. That's an issue in our analysis.

17 MR. CLATANOFF: Let me just quote  
18 something from your testimony here. The quote  
19 "Differential impact of trade on women and how the  
20 resulting problems might be addressed." Frankly I  
21 have seen evidence that trade liberalization market  
22 openings usually increases employment opportunities

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1 for poor women in less developed economies and creates  
2 new alternatives and options for income producing  
3 activities. If you have studies or evidence that  
4 shows trade liberalization actually harms women as  
5 opposed to the evidence I've seen or particular policy  
6 proposals to assure that women do share equally in the  
7 gains of trade, I would like you to either talk about  
8 them today or send them to me at your leisure.

9 MS. HANSEN-KUHN: Yes, I think it's true  
10 that in many cases increased trade or investment leads  
11 to increase in investment. But if you look at the  
12 maquiladoras in Mexico, it's employment but under what  
13 conditions since there are no really enforceable  
14 provisions to raise labor standards and women are put  
15 in a position where they enter the labor market under  
16 a weak circumstances. It's difficult for them to get  
17 respectable wages or to advance their conditions.

18 There are members of our coalition who  
19 have been studying this. I think most particularly  
20 Women's Edge has been documenting the impacts of trade  
21 in different countries. Within our proposal,  
22 Alternatives for the Americas, there is a chapter on

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1 gender that outlines the different problems that have  
2 occurred and makes proposals for how those might be  
3 addressed. One of those is that the government starts  
4 with an impact assessment of what the impacts of  
5 certain trade proposals, concrete proposals, might be.  
6 That's something else that Women's Edge has been  
7 developing. I think when Maureen Heffern Ponicki  
8 testified yesterday she mentioned that. But I would  
9 be happy to send the chapter on gender or the full  
10 Alternatives document if you are interested.

11 MR. CLATANOFF: Yes, I would like it.

12 MR. SMITH: I guess I could thank you. I  
13 would like to invite you to share with us your  
14 thoughts on Civil Society participation as well.

15 MS. HANSEN-KUHN: When the Civil Society  
16 Committee was formed, we did submit both this  
17 document, Alternatives for the Americas, and a  
18 proposal on how the committee might be improved. One  
19 thing we think is that first of all the way that  
20 process is played out, many people submitted  
21 documents. I think there was something like 70  
22 submissions. Then the governments nine months later

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1 came up with a four page summary that they gave to the  
2 ministers. I think everybody agreed that was kind of  
3 an insult.

4 But I think the truth is that you are  
5 right. You get a lot of different proposals. It's  
6 hard to know how to summarize them all, how to get  
7 them into that process. So what we suggest is that  
8 both before and after meetings of negotiating groups  
9 there be meetings in each country or at least the  
10 opportunity for Civil Society people to meet with  
11 negotiators to hear what issues are on the table, what  
12 have come out of those negotiations so that it is a  
13 continuous process of interaction rather than just  
14 periodically sending something off to a suggestion box  
15 and then hoping for the best.

16 MR. SMITH: There have been some changes  
17 made to the process in response to the feedback that  
18 we've gotten from Civil Society including things like  
19 the summaries going forward to the ministers. I guess  
20 as you see this process go on, it will be helpful for  
21 us to get feedback on whether you think that it is  
22 improving, that it is coming closer to meeting the

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1 needs of Civil Society. I'm noting your suggestion on  
2 meetings. You're right. It has been raised before  
3 but also the things that we are doing, we need to know  
4 if they are working or not.

5 MS. HANSEN-KUHN: I think that's great.  
6 I think we did see it as a big break-through when the  
7 draft text was published but as I said it's  
8 frustrating I'm sure to everyone at this point that  
9 there are ten proposals on each issue. But I hope  
10 that the governments will agree to continue to publish  
11 the draft text of the negotiations and also that in  
12 future text, they identify which countries or groups  
13 of countries are supporting particular proposals. I  
14 think part of the issue with participation and part of  
15 our frustration has been we send information in but  
16 it's hard to know how it's been taken into account.

17 CHAIRPERSON SURO-BREDIE: I believe that  
18 concludes our questions and thank you very much for  
19 your testimony. This hearing is adjourned.

20 (Whereupon, the above-entitled matter  
21 concluded at 12:42 p.m.)  
22